

# 19-2861

## 19-3009

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IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

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LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,  
LOCAL UNION NO. 91,  
*Petitioner-Cross-Respondent,*

vs.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent-Cross-Petitioner.*

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PETITION FOR REVIEW OF DECISION AND ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD

---

### **JOINT APPENDIX**

#### **VOLUME I—Pages 1-204**

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## Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction Co., Inc.)

Case Number: 03-CB-196682  
 Date Filed: 04/12/2017  
 Status: Open

Location: Niagara Falls, NY  
 Region Assigned: Region 03, Buffalo, New York

### Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
02/24/2020	Circuit Court Order	Court
02/24/2020	Circuit Court Order	Court
02/20/2020	Circuit Court Mediation Order*	Court
02/10/2020	Circuit Court Order	Court
02/10/2020	Circuit Court Order	Court
02/07/2020	Stipulation	Petitioner
02/07/2020	Circuit Court Mediation Order*	Court
01/09/2020	Circuit Court Order	Court
01/09/2020	Circuit Court Filing	Court
01/08/2020	Stipulation	Petitioner

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Case Number: 03-CB-196682  
Date Filed: 04/12/2017  
Status: Open

Location: Niagara Falls, NY  
Region Assigned: Region 03, Buffalo, New York

### Docket Activity

Date	Document	Issued/Filed By
01/08/2020	Stipulation to Dismiss	NLRB - GC
01/07/2020	Circuit Court Mediation Order*	Court
12/03/2019	Circuit Court Mediation Order*	Court
10/29/2019	Circuit Court Filing	Court
10/25/2019	Circuit Court Order	Court Petitioner
10/24/2019	Circuit Court Filing	Petitioner
10/10/2019	Answer to Enforcement Application	Charged Party / Respondent
10/08/2019	Circuit Court Filing	Court
10/04/2019	Circuit Court Filing	Petitioner
10/04/2019	Circuit Court Filing	Petitioner

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Date Filed: 04/12/2017  
Status: Open

Location: Niagara Falls, NY  
Region Assigned: Region 03, Buffalo, New York

### Docket Activity

Date	Document	Issued/Filed By
10/04/2019	Circuit Court Filing	Petitioner
10/04/2019	Circuit Court Filing	Petitioner
10/03/2019	Circuit Court Filing	NLRB - GC
10/03/2019	Circuit Court Filing	Court
10/03/2019	Circuit Court Filing	Court Respondent
10/03/2019	Notice of Appearance - Court	Charged Party / Respondent
09/25/2019	Notice of Appearance - Court	Charged Party / Respondent
09/25/2019	Notice of Appearance - Court	Charged Party / Respondent
09/23/2019	Notice of Appearance - Court	NLRB - GC
09/20/2019	Notice of Appearance - Court	NLRB - GC

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Date Filed: 04/12/2017  
Status: Open

Location: Niagara Falls, NY  
Region Assigned: Region 03, Buffalo, New York

### Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
09/20/2019	Cross Application for Enforcement	NLRB - GC
09/20/2019	Circuit Court Filing	Court
09/20/2019	Circuit Court Filing	Court
09/20/2019	Circuit Court Filing	Court
09/18/2019	Notice of Appearance - Court	Petitioner
09/17/2019	Notice of Appearance - Court	Petitioner
09/17/2019	Notice of Appearance - Court	Petitioner
09/12/2019	Notice of Appearance - Court	NLRB - GC
09/12/2019	Notice of Appearance - Court	NLRB - GC
09/11/2019	Notice of Appearance - Court	NLRB - GC

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 Date Filed: 04/12/2017  
 Status: Open

Location: Niagara Falls, NY  
 Region Assigned: Region 03, Buffalo, New York

### Docket Activity

Date	Document	Issued/Filed By
09/11/2019	Notice of Appearance - Court	Petitioner
09/10/2019	Circuit Court Filing	Court Petitioner
09/10/2019	Circuit Court Filing	Court
09/10/2019	Petition for Review	Court Petitioner
08/12/2019	Board Decision	NLRB - Board
01/08/2018	Brief in Support of Exceptions	Counsel for GC / Region
01/08/2018	Exceptions to ALJD	Counsel for GC / Region
12/11/2017	Administrative Law Judges Decision	NLRB - ALJ
12/11/2017	Order Transferring Proceeding to the Board	NLRB - Board
11/30/2017	Post-Hearing Brief to RD*	Charged Party / Respondent

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Case Number: 03-CB-196682  
Date Filed: 04/12/2017  
Status: Open

Location: Niagara Falls, NY  
Region Assigned: Region 03, Buffalo, New York

### Docket Activity

Date	Document	Issued/Filed By
11/30/2017	Post-Hearing Brief to ALJ	Counsel for GC / Region
10/09/2017	Answer to Complaint*	Charged Party / Respondent
09/25/2017	Amended Complaint*	NLRB - GC
09/06/2017	Answer to Complaint*	Charged Party / Respondent
08/23/2017	Consolidated Complaint (C Cases Only)*	NLRB - GC
07/13/2017	Answer to Complaint*	Charged Party / Respondent
06/29/2017	Complaint and Notice of Hearing*	NLRB - GC
06/21/2017	Letter Approving Withdrawal Request*	NLRB - GC
04/24/2017	Signed Amended Charge Against Union*	Charging Party
04/24/2017	Amended Charge Letter*	NLRB - GC

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Case Number: 03-CB-196682  
Date Filed: 04/12/2017  
Status: Open

Location: Niagara Falls, NY  
Region Assigned: Region 03, Buffalo, New York

### Docket Activity

Date	Document	Issued/Filed By
04/24/2017	Amended Charge Letter*	NLRB - GC
04/12/2017	Initial Letter to Charging Party*	NLRB - GC
04/12/2017	Initial Letter to Employer In C Case*	NLRB - GC
04/12/2017	Initial Letter to Charged Party*	NLRB - GC
04/12/2017	Signed Charge Against Employer*	Charging Party

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The Docket Activity list does not reflect all actions in this case.

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### Allegations

- 8(b)(1)(A) Duty of Fair Representation, incl'g Superseniority, denial of access

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## Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction Co., Inc.)

Case Number: 03-CB-201412  
 Date Filed: 06/27/2017  
 Status: Open

Location: Niagara Falls, NY  
 Region Assigned: Region 03, Buffalo, New York

### Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
08/12/2019	Board Decision	NLRB - Board
01/08/2018	Brief in Support of Exceptions	Counsel for GC / Region
01/08/2018	Exceptions to ALJD	Counsel for GC / Region
12/11/2017	Administrative Law Judges Decision	NLRB - ALJ
12/11/2017	Order Transferring Proceeding to the Board	NLRB - Board
11/30/2017	Post-Hearing Brief to ALJ	Counsel for GC / Region
10/09/2017	Answer to Complaint*	Charged Party / Respondent
09/25/2017	Amended Complaint*	NLRB - GC
09/06/2017	Answer to Complaint*	Charged Party / Respondent
08/23/2017	Consolidated Complaint (C Cases Only)*	NLRB - GC

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## Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction Co., Inc.)

Case Number: 03-CB-201412

Date Filed: 06/27/2017

Status: Open

Location: Niagara Falls, NY

Region Assigned: Region 03, Buffalo, New York

### Docket Activity

Date	Document	Issued/Filed By
08/16/2017	Signed Amended Charge Against Union*	Charging Party
08/16/2017	Amended Charge Letter*	NLRB - GC
08/16/2017	Amended Charge Letter*	NLRB - GC
08/16/2017	Amended Charge Letter*	NLRB - GC
07/13/2017	Answer to Complaint*	Charged Party / Respondent
06/29/2017	Complaint and Notice of Hearing*	NLRB - GC
06/27/2017	Initial Letter to Charging Party*	NLRB - GC
06/27/2017	Initial Letter to Employer in C Case*	NLRB - GC
06/27/2017	Initial Letter to Charged Party*	NLRB - GC
06/27/2017	Signed Charge Against Union*	Charging Party

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The Docket Activity list does not reflect all actions in this case.

Hearing Transcript, Volume 1, Dated October 11, 2017 [Pages 1-193].

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

Laborers International Union of Case No. 03-CB-196682  
North America, Local Union of 03-CB-201412  
North America, Local Union No.  
91, (Scrufari Construction Co.,  
Inc.)

and

Ronald J. Mantell and Ronald J.  
Mantell, An Individual.

And

Scrufari Construction Co. Inc.

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Place: Buffalo, New York

Dates: October 11, 2017

Pages: 1 through 193

Volume: 1

OFFICIAL REPORTERS

AVTranz  
E-Reporting and E-Transcription  
7227 North 16th Street, Suite 207  
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(602) 263-0885

Hearing Transcript, Volume 1, Dated October 11, 2017 [Pages 1-193].

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

LABORER'S INTERNATIONAL UNION  
OF NORTH AMERICA, LOCAL UNION  
OF NORTH AMERICA, LOCAL UNION  
NO. 91, SCRUFARI CONSTRUCTION  
CO, INC.),

and

RONALD J. MANTELL, AND RONALD  
J. MANTELL, AN INDIVIDUAL.

and

SCRUFARI CONSTRUCTION CO, INC.,

Case No. 03-CB-196682  
03-CB-201412

The above-entitled matter came on for hearing, pursuant to notice, before **DAVID I. GOLDMAN**, Administrative Law Judge, at the Buffalo Hearing Room, Suite 630, 130 S. Elmwood Avenue, Buffalo, New York 14202, on **Wednesday, October 11, 2017, 10:00 a.m.**

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A P P E A R A N C E S

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Ronald Mantell	23	86	147		28/34/52 55/61/63 69/76
Robert Connolly	155	160	177	178	

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E X H I B I T S

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EXHIBITIDENTIFIEDIN EVIDENCE

4

**General Counsel:**

5

GC-1 (a) through 1 (r)

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**Respondent:**

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R-1

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1 P R O C E E D I N G S

2 JUDGE GOLDMAN: This is a formal hearing before the  
3 National Labor Relations Board in the matter of Laborer's  
4 International Union of North America, Local Union No. 91 and  
5 Ronald J. Mantell, Case Numbers 3-CB-196682 and 3-CB-201412.

6 The Administrative Law Judge conducting this hearing is  
7 David I. Goldman. I'm located in the Washington, D.C. office  
8 of the Division of Judges. All communications to me should be  
9 addressed there.

10 No eating gums or mints in the hearing room. Beverages  
11 are okay. But please turn your phones off or set them to  
12 silent. Don't leave them to ring. Or set them to vibration.

13 Can I get counsel to state their appearances for the  
14 record?

15 MR. DURYEA: Eric Duryea for the General Counsel.

16 JUDGE GOLDMAN: Okay. And who is with you at counsel  
17 table?

18 MR. DURYEA: Jesse Feuerstein.

19 JUDGE GOLDMAN: Okay. And who else?

20 MR. DURYEA: That's it for the General Counsel.

21 JUDGE GOLDMAN: And give me -- and who is with --

22 MR. DURYEA: This is the Charging Party.

23 JUDGE GOLDMAN: Okay. That's Mr. Mantell?

24 MR. DURYEA: Yes.

25 JUDGE GOLDMAN: Okay. Respondent?

1 MR. BOREANAZ: Good morning. Robert Boreanaz on behalf of  
2 the Respondents. With me is Richard Palladino and Mario Neri,  
3 N-E-R-I.

4 JUDGE GOLDMAN: Okay. Thank you. Counsel, can you  
5 introduce the pleadings?

6 MR. DURYEA: Yes, I can. Actually, as a preliminary  
7 matter --

8 JUDGE GOLDMAN: Yes.

9 MR. DURYEA: -- Your Honor, may I ask Your Honor to take  
10 judicial notice of the Board decision that is referred to in  
11 the complaint in --

12 JUDGE GOLDMAN: Well, I have seen it.

13 MR. DURYEA: You have seen it? It's --

14 MR. BOREANAZ: I actually have a copy of it.

15 JUDGE GOLDMAN: Yeah, I have a copy as well.

16 MR. DURYEA: Okay. Recorded at 365 NLRB Number 28.

17 MR. BOREANAZ: I plan on marking it as an exhibit.

18 JUDGE GOLDMAN: Well, I don't think any of that is  
19 necessary. It's a public record. I want to make sure we're  
20 talking about the same one. I have 365 NLRB Number 28.

21 MR. DURYEA: Yeah, that's correct.

22 JUDGE GOLDMAN: So I don't think we need to mark it and  
23 put it in. It's available to everyone and myself.

24 MR. DURYEA: And Your Honor will take judicial notice of  
25 it?

1 JUDGE GOLDMAN: Well, I don't know what that means. I  
2 mean, I'm not sure what you're asking. I'm aware of it. I'm  
3 aware that it's --

4 MR. BOREANAZ: I just --

5 JUDGE GOLDMAN: What are you asking?

6 MR. BOREANAZ: I'd stipulate that it exists and that you  
7 can access it and look at it as part of your consideration in  
8 this case.

9 JUDGE GOLDMAN: Yeah. I mean, I think -- I mean, is that  
10 all you're looking for?

11 MR. DURYEA: Yeah, that's --

12 JUDGE GOLDMAN: It's before me. I understand it could  
13 have implications so I'm going to assume that it's the same  
14 party and --

15 MR. BOREANAZ: It's not the same party.

16 MR. DURYEA: This is not the same party. This the brother  
17 of --

18 JUDGE GOLDMAN: No, but the Respondent is the same party.

19 MR. DURYEA: Yes, that's exactly.

20 JUDGE GOLDMAN: If someone's name is the -- I understand  
21 the Charging Party, according to the complaint, is the  
22 brother --

23 MR. DURYEA: Yes.

24 JUDGE GOLDMAN: -- of the Charging Party in this case.  
25 But I'm going to assume that this Richard Palladino in this

1 case, it's the same Richard Palladino in this case.

2 MR. BOREANAZ: Yes.

3 JUDGE GOLDMAN: Tell me if there's any unlikely  
4 coincidence, but that's what I'm going to assume. Okay. All  
5 right. Do you want to move the formal papers?

6 MR. DURYEA: Yes, Your Honor. I offer into evidence the  
7 formal papers. They have been marked for identification as  
8 General Counsel Exhibit (a) through -- it's going to be (a)  
9 through (r) inclusive, Exhibit 1(r) being an index and  
10 description of the entire exhibit. This exhibit has already  
11 been shown to all the parties just noting the fact that what we  
12 were discussing earlier that we are right now just getting  
13 copies of and labeling Exhibit --

14 JUDGE GOLDMAN: 1(q).

15 MR. DURYEA: -- 1(q).

16 JUDGE GOLDMAN: 1(q) is going to be the amended answer.

17 MR. BOREANAZ: It would be 1(r) actually. Correction, 1-R  
18 as in Robert.

19 JUDGE GOLDMAN: Well, I was going to have to -- you know,  
20 I think that's a good idea.

21 MR. DURYEA: Okay.

22 MR. BOREANAZ: Okay.

23 JUDGE GOLDMAN: So the index and description of formal  
24 documents is going to remain the same, 1(a) through (q). We're  
25 going to add an (r) which is the amended answer of Respondent

1 that was filed -- I want to say it was filed October 9th or  
2 10th.

3 MR. BOREANAZ: It was.

4 JUDGE GOLDMAN: And we'll have copies of that and that  
5 will be -- and you need to give the court reporter a copy so  
6 that she can include that in the formal papers.

7 MR. DURYEA: Yes, Your Honor.

8 JUDGE GOLDMAN: Okay. All right. So that's received into  
9 evidence, 1(a) through (r).

10 **(General Counsel Exhibit Number 1(a) through 1(r) Received into**  
11 **Evidence)**

12 JUDGE GOLDMAN: Opening statements?

13 MR. DURYEA: Your Honor, there's one more preliminary  
14 matter --

15 JUDGE GOLDMAN: Yes.

16 MR. DURYEA: -- that we need to take care of. This is an  
17 amendment to the complaint --

18 JUDGE GOLDMAN: Okay.

19 MR. DURYEA: -- and this is an amendment to paragraph 5 of  
20 the complaint, the allegations regarding agents of the Union.

21 JUDGE GOLDMAN: Uh-huh.

22 MR. DURYEA: And the amendment is for paragraph 5 to read  
23 as follows. "A, at all material times the following  
24 individuals held the positions set forth opposite their  
25 respective names and have been agents of Respondent within the

1 meaning of Section 2(13) of the Act. Richard Palladino,  
2 Business Manager. Mario Neri, Respondent/Employee.  
3 Subparagraph B, at all material times since January 1st, 2017  
4 the following individuals held the positions set forth opposite  
5 their respective names and have been agents of Respondent  
6 within the meaning of Section 2(13) of the Act. William Grace,  
7 President. Kevin Hasley, Recording Secretary. Dave Bellring,  
8 Vice President. Paul Hoit, Executive Board Member. Anthony  
9 Ventura, Executive Board Member. Don Pellini, Auditor. Ruse  
10 Standzell, Auditor."

11 JUDGE GOLDMAN: Okay. Well, any objection to that  
12 amendment?

13 MR. BOREANAZ: No objection.

14 JUDGE GOLDMAN: Okay. Does that change an answer to an  
15 admission?

16 MR. BOREANAZ: It does.

17 JUDGE GOLDMAN: Okay. So that's admitted as the amended  
18 paragraph 5, is it?

19 MR. BOREANAZ: The amended paragraph 5 as described in  
20 subparagraph A and B is our response as amended to admit those  
21 paragraphs.

22 JUDGE GOLDMAN: Okay. Is that the amended answer? Yeah.  
23 Make sure the court reporter has two of those. So this is --  
24 we're amending 1(r).

25 THE COURT REPORTER:: 1(r). Thank you.

Opening Statement by Mr. Duryea.

1 JUDGE GOLDMAN: General Counsel --

2 MR. BOREANAZ: Judge, do you have one?

3 JUDGE GOLDMAN: I have one. General Counsel's 1(r).

4 Okay. Anything else?

5 MR. DURYEA: No, Your Honor.

6 JUDGE GOLDMAN: Okay. Do you have an opening statement?

7 MR. DURYEA: Yes. Yes, Your Honor.

8 JUDGE GOLDMAN: I'll take it if you have one.

9 MR. DURYEA: This case is primarily about the business  
10 manager of the Respondent Union, Richard Palladino, retaliating  
11 against the Charging Party, Ron Mantell, for the protected  
12 concerted activity of Ron's brother, Frank Mantell, who is also  
13 a member of the Union.

14 The evidence will show the many ways in which Palladino  
15 has taken unlawful actions against the union members -- against  
16 the Union's members out his hostility towards those members'  
17 exercise of protected rights.

18 The evidence will show that Palladino's retaliation  
19 against Ron Mantell took the form of refusing to refer him out  
20 for jobs for nearly two years from November 2015 until today.  
21 This after Ron averaged over 1,000 hours per year in referrals  
22 from the Union for the prior ten years. After a job Ron worked  
23 in November of 2015, those referrals stopped cold.

24 What else happened in November 2015? Ron's brother,  
25 Frank, filed an unfair labor practice charge against the Union.

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12

Opening Statement by Mr. Duryea.

1 This charge ultimately resulted in a Board decision finding  
2 that the Union had retaliated against Frank for its criticism  
3 of Palladino which was found to be protected concerted  
4 activity.

5 The evidence will show that in a November 2016  
6 conversation with Ron Mantell --

7 JUDGE GOLDMAN: What year?

8 MR. DURYEA: November 2016.

9 JUDGE GOLDMAN: Thank you.

10 MR. DURYEA: In a November 2016 conversation with Ron  
11 Mantell, Palladino drew a plain connection between his failure  
12 to refer Ron out the jobs and Ron's brother, Frank. In that  
13 same conversation Palladino threatened to bring Ron up on  
14 internal union charges if Ron went to the NLRB.

15 The Board decision in Frank Mantell's case was issued on  
16 February 7th, 2017 finding that the Union had violated the Act.  
17 What happened less than a month later? Palladino filed union  
18 charges against Ron Mantell. The Union found Ron guilty of  
19 those charges and suspended him for six months and fined him  
20 \$500.

21 What was the ostensible basis for those charges and that  
22 severe penalty? Just this. Ron had secured himself a one-day,  
23 six-hour job on February 1st, 2017. Ron had to secure this job  
24 on his own to be eligible for supplemental pay or sub pay  
25 precisely because the Union refused to refer him out for even a

Opening Statement by Mr. Duryea.

1 one-day job. Ostensibly, Palladino charged and the Union  
2 judged Ron guilty of violating a provision in the collective  
3 bargaining agreement about a steward being the first person  
4 referred to a job.

5 Is Ron Mantell is a signatory to the collective bargaining  
6 agreement? Of course not. And yet the Union found that a  
7 fitting penalty for working without a steward for a one-day  
8 six-hour job, a job that Ron secured himself with no help from  
9 the Union, to be suspended for six months and fined \$500.

10 The evidence will also show that Ron Mantell engaged in  
11 protected concerted activity of his own. In June 2017 Ron  
12 policed the Union's referrals from the out-of-work list. What  
13 did the Union do in response? Palladino ordered that because  
14 of Ron's policing activity, Ron was not to be shown the out-of-  
15 work list at all. The Union also soon after stopped its  
16 practice of updating the out-of-work list daily and instead now  
17 only updates it weekly making it all the more difficult for  
18 members to police the referrals.

19 The evidence will show all this and that by these actions  
20 the Union violated Section 8(b)(1)(A) of the Act. Thank you.

21 JUDGE GOLDMAN: Okay. Thank you. Respondent?

22 MR. BOREANAZ: Can we shut the door, please?

23 JUDGE GOLDMAN: Any statement?

24 MR. BOREANAZ: Yes. I do have an opening statement. The  
25 Board laid out a fiction of how the facts and circumstances of

Opening Statement by Mr. Boreanaz.

1 this case are portrayed because they're being portrayed through  
2 the eyes of Ron Mantell. I think the evidence will demonstrate  
3 that Ron Mantell doesn't have credibility. Richard Palladino  
4 is an experienced union official for Laborer's Local 91. He's  
5 been a union officer for decades. He's in the twilight of his  
6 career. He doesn't have thin skin. He's not concerned about  
7 opinions that differ from his. He is, however, concerned about  
8 the members and concerned about the contractors.

9 Mario Neri is an employee of the Union. Mario also, like  
10 Richard Palladino, is an experienced longtime employee that's  
11 been primarily responsible for the operation of the non-  
12 exclusive hiring hall. Neither one of these two folks despite  
13 their age and experience are perfect, but they are consistent  
14 in trying to do the right thing.

15 The Charging Party is not one of the Union's best  
16 employees. He has by his own actions limited his ability to be  
17 referred out to work. Now, there's been this reference to this  
18 prior Board decision by the Charging Party's brother and I  
19 think it's important for Your Honor to understand the  
20 background of this since it apparently is going to be a focal  
21 point in this hearing.

22 Local 91, I think all of the witnesses would agree, has  
23 had a troubled history. Back in 2000, I believe, acting and  
24 sitting union officers were indicted in federal court under a  
25 RICO conspiracy case involving threats to contractors and

Opening Statement by Mr. Boreanaz.

1 extortion. Since 2000 the Union has tried desperately to  
2 divorce itself from that negative image. Locally, contractors  
3 were rejoicing when these folks got indicted. They were saying  
4 that now development which was stalled, et cetera.

5 When Richard Palladino became the business manager after  
6 the Union was taken out of trusteeship by the Government, he  
7 embarked upon a process to try and restore the credibility of  
8 Local 91 in the community and distance itself from the criminal  
9 complaint, the backdrop of the prior NLRB charge.

10 The Charging Party's brother, Frank, would come to  
11 meetings and complain about Palladino's selection of stewards,  
12 would complain about how Palladino would do his work and after  
13 those complaints there's nothing that happened to Frank. Frank  
14 wasn't charged with any internal union discipline. There was  
15 no claim of wrongdoing on the part of the business manager.

16 At one point in Fall of 2015 there was a mayoral election  
17 in the City of Niagara Falls, primary election incumbent  
18 running against a challenger. Local 91 backed the challenger.  
19 Frank Mantell, the Charging Party's brother, backed the  
20 incumbent. Again, no problems, no issues. Brother Mantell  
21 took to Facebook. And one of the things that Brother Mantell  
22 took to Facebook was that this business manager gave the  
23 challenger a union book in exchange for a favor in the future.

24 In essence, the Charging Party's brother alleged that  
25 Palladino engaged in a crime and was shady and was backdoor

Opening Statement by Mr. Boreanaz.

1 dealing. Again, the backdrop of the prior indictments and the  
2 efforts to try and distance the Union from allegations of  
3 criminal conduct. Not as a result of complaining about the  
4 stewards or anything like that, but as the result of being  
5 accused of a crime, Richard Palladino used his rights under the  
6 constitution of the local union and brought Mantell, Brother  
7 Mantell, up on charges. Through the normal due process of the  
8 Union, Brother Mantell was disciplined.

9 Brother Mantell then went to the Board and alleged that  
10 his speech on Facebook was protected. There is serious  
11 disagreement over what is protected speech and, as you know,  
12 Facebook even a few years ago was an interesting topic for the  
13 Board to deal with and grapple with, what constituted free  
14 speech and what did not constitute free speech.

15 I will tell you with all sincerity -- and my client is  
16 very familiar with this. We sat in this very room and  
17 addressed that issue of what is free speech, what is protected.  
18 Can somebody allege that you engaged in a crime when he himself  
19 might know that that allegation he knows is misleading? In all  
20 candor, Your Honor, the record wasn't fully developed. The  
21 record was resisted to be developed because it just wasn't  
22 heard.

23 Regardless, the backdrop of this whole complaint is there  
24 was effort to rid of criminal perception. There was a  
25 legitimate concern and dispute over what was protected speech.

Opening Statement by Mr. Boreanaz.

1 It was litigated and a Board ruled. Decision was issued,  
2 compliance was done, the matter is finished.

3 Somehow the Board now wants to say that Brother Mantell's  
4 protected speech in the fall of 2015 is protecting the Charging  
5 Party to do whatever he wants whether it be violate the Local  
6 rules, whether it be violate the contract and he would  
7 therefore be immune because of his brother's protected activity  
8 in the fall of 2015 from any action the Union could lawfully  
9 bring under its bylaws or its constitution.

10 I just want the Court to know that Brother Mantell was not  
11 unilaterally removed or disciplined and in this case, although  
12 the complaint suggests otherwise -- the complaint, frankly,  
13 suggests that Mantell, the Charging Party, was unilaterally  
14 removed from the out-of-work list. He was not. This is not a  
15 case where business manager gets an opposition to an election  
16 and therefore punishes the person who challenged him in an  
17 election. The Charging Party was subject to due process  
18 through the Union and the trial board of the Union is the one  
19 who opposed the punishment for his violating the rules.

20 Now, in paragraph 6(c) -- and paragraph 6 is the first  
21 part of the thrust of the case. And just by way of background,  
22 I mentioned to you that the referral rules for the hall is a  
23 non-exclusive referral hall, that the rules, the written rules  
24 for the hall were approved and established by the international  
25 union, Laborer's International.

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Opening Statement by Mr. Boreanaz.

1 I don't know if you recall, in the mid-90s Laborer's  
2 International Union, LIUNA, was threatened by the U.S. Justice  
3 Department and as a result of that threat LIUNA agreed to a  
4 consent decree whereby they made drastic changes in the  
5 international union and therefore made drastic changes in the  
6 local union because of allegations of criminal influence.

7 Robert Luskin was a former Department of Justice attorney  
8 that was hired by this new LIUNA and Robert Luskin is the one  
9 who approved and authorized the hiring hall rules that are in  
10 place today at Local 91 and that were administered by Mario  
11 Neri.

12 Paragraph 6(c) alleges that from November 2015 with  
13 knowledge of the Respondent and continuing thereafter responded  
14 by its operation of non-exclusive hiring hall refused to refer  
15 Charging Party out for work. Well, by coincidence, November --  
16 there's an attempt to draw this connection between the Fall of  
17 2015 when Brother Mantell made these Facebook posts to November  
18 2015 that relates to the Charging Party. Well, in western New  
19 York the construction season is winding down in November of  
20 2015. Most of the members are getting laid off.

21 Paragraph 4(d), apparently the Board is alleging, a year  
22 later after Brother Mantell's protected activity, the  
23 allegation is that Richard Palladino makes this specific  
24 threat, internal union charges if you file charges with the  
25 Board. To be clear, that is flat out rejected as false. That

Opening Statement by Mr. Boreanaz.

1 did not happen. And it doesn't make sense what happens on  
2 November 16th, according to the Board and Mr. Mantell, as to  
3 why Mr. Palladino would make a statement like that a year after  
4 this protected activity. It's like one of these allegations  
5 that's just thrown in there. It doesn't make any sense. And I  
6 think that Ron, again going back to, believes that he can  
7 manipulate the system because he doesn't want to be subjected  
8 to the same rules and responsibilities that other members have  
9 to be responsible for and he doesn't want to take  
10 responsibility for the fact that he's limited himself as an  
11 employee.

12 6(e) alleges business manager filed internal union charges  
13 against Ron. Well, that's true. That did happen. And if you  
14 go back to the alleged threat, if you file charges at the Board  
15 then I will file internal union charges against you. That's  
16 the alleged threat which we've denied. In March 2017 there  
17 were no Board charges filed by the Charging Party. There was  
18 nothing that happened except for the Charging Party violated  
19 his duty and violated the rules of the Union. Now, Palladino  
20 didn't take action into his own hands as a result of this  
21 violation of rule and duty. He did what he's supposed to do.  
22 He brought charges, went through the normal due process  
23 required by the Union.

24 6(f), the Board makes this allegation to imply that Mr.  
25 Palladino who was the subject of the critique by Brother

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Opening Statement by Mr. Boreanaz.

1 Mantell in the Facebook post. The Board implies that Palladino  
2 fine Ron Mantell and suspended him. Well, that's not accurate.  
3 He was fined and he was suspended, but he was fined and  
4 suspended after a due process procedure before a local trial  
5 board that's completely with the LMRDA and he was fined and  
6 suspended by his brother members, a trial board that listened  
7 to him, not by Richard Palladino. These are trial board  
8 members that are all elected by other members, not appointed by  
9 Richard Palladino. So it's misleading to say that or to  
10 suggest that Palladino fined and suspended him. That did not  
11 happen.

12 Now the Board wants you to believe that the fine and  
13 suspension by the trial board and the bringing up of union  
14 charges against Mantell were as soon as result of Brother  
15 Mantell's Facebook post in 2015. They were not. The internal  
16 union charges were brought up because he violated the rules and  
17 the fine and suspension were brought up because that's what the  
18 trial board thought was appropriate. It had absolutely nothing  
19 to do with the 2015 Facebook post.

20 Charge 7 is just kind of isolated. This the second  
21 charge. It's kind of this isolated situation. And again, this  
22 is not a unilateral thing. Charge 7(a) alleges that Ron  
23 engaged in some protected activity of investigating referrals  
24 of others from the list. Well, engaged in protected activity  
25 doesn't give an individual carte blanche to do whatever he or

Opening Statement by Mr. Boreanaz.

1 she wants or to be immune from decorum and responsibility as a  
2 member.

3 Now we don't believe and have denied he engaged in  
4 protected activity, but it's sufficed to say that Mantell never  
5 ever asked for any records regarding the referral of members  
6 that he says were sent before him were out of line. He has a  
7 right to do that. The referring hall rules are crystal clear.  
8 He could ask for that. He never did ask for that. And if he  
9 did ask for it he would have gotten the records and if by some  
10 reason he was denied the records, he has a lawful right under  
11 the written procedures to go back and call that former  
12 government lawyer at the international union, Robert Luskin's  
13 replacement, and complain to them. He never did that.

14 7(b) alleges that Neri refused to allow the Charging Party  
15 to review the out-of-work list. Well, that's just wrong. It's  
16 misleading. And you're going to hear testimony that Ron was  
17 disruptive in the union hall. He had been to the union hall  
18 the day before. He had seen the same list. He took a picture  
19 of it and the following day he was loud, obnoxious and  
20 disruptive to the staff that was in the union hall.

21 7(c) alleges that as a result of -- 7(c) alleges that the  
22 union changed its practice by posting the out-of-work list  
23 weekly instead of daily. Well, that's just not accurate. It's  
24 not resolved to be done on a daily basis. None of -- it didn't  
25 change anything the way it posted its list and certainly didn't

Opening Statement by Mr. Boreanaz.

1 do anything like that because of Ron Mantell.

2 And so we believe that at the conclusion of this hearing  
3 when the facts are all laid out this convoluted theory doesn't  
4 hold up, that Mr. Mantell failed to take responsibility for his  
5 own action, failed to respect his brother members' decision to  
6 discipline him and we believe that there has been no violation  
7 of the Act.

8 JUDGE GOLDMAN: Okay. Thank you. Just one question, the  
9 trial board ruling, the internal union -- the local union trial  
10 board ruling, does that get appealed automatically or by --

11 MR. BOREANAZ: That's a good question.

12 JUDGE GOLDMAN: -- choice to the international and, if so,  
13 is it pending or have they --

14 MR. BOREANAZ: That's a good question.

15 JUDGE GOLDMAN: -- done anything with it?

16 MR. BOREANAZ: The Charging Party did, as he's entitled  
17 to, file an appeal with the international union, Laborer's  
18 International Union of North America, that last week there was  
19 a telephone conference which he participated in and argued his  
20 appeal before the International Executive Board designates.  
21 And to my knowledge, as we sit here today, we don't have a  
22 decision on that.

23 JUDGE GOLDMAN: So it's pending as far as you know.

24 MR. BOREANAZ: Yes.

25 JUDGE GOLDMAN: Okay.

Mantell - Direct - Duryea

1 MR. BOREANAZ: My experience is that, you know, a couple  
2 weeks, three, four weeks, you know, before we would get a  
3 decision.

4 JUDGE GOLDMAN: Okay. Thank you.

5 You can call your first witness.

6 MR. DURYEA: Yes, the General Counsel calls Ronald  
7 Mantell.

8 JUDGE GOLDMAN: Just have a seat. I'll ask that you raise  
9 your right hand.

10 Whereupon,

11 RONALD MANTELL

12 having been duly sworn, was called as a witness herein and was  
13 examined and testified as follows:

14 JUDGE GOLDMAN: Proceed.

15 DIRECT EXAMINATION

16 Q BY MR. DURYEA: Mr. Mantell, are you a union member?

17 A Yes, I am.

18 Q And what union are you a member of?

19 A Laborer's Local 91.

20 Q How long have you been a member of Local 91?

21 A Twenty-seven years.

22 Q Do you know Frank Mantell?

23 A Yes, I do.

24 Q And who is Frank Mantell?

25 A He is my brother.

Mantell - Direct - Duryea

- 1 Q Does the Local hold membership meetings?
- 2 A Yes.
- 3 Q How often do they hold those meetings?
- 4 A Once a month, but during the summer months they suspend
- 5 the union meetings.
- 6 Q So let me draw your attention to October of 2015. Did you
- 7 attend the membership meeting that month?
- 8 A Yes, I did.
- 9 Q Was there a vote about your brother, Frank Mantell, at
- 10 that meeting?
- 11 A Yes, there was.
- 12 Q Describe what happened at that vote.
- 13 A The members were asked to show a sign of hands to find
- 14 guilt.
- 15 Q And there was a show of hands basically to agree to the
- 16 fine and suspension?
- 17 A Yes.
- 18 Q And did you raise your hand?
- 19 A No, I did not.
- 20 Q So you effectively voted no?
- 21 A Yes.
- 22 MR. BOREANAZ: I'm going to object to leading.
- 23 JUDGE GOLDMAN: Yeah, sustained.
- 24 Q BY MR. DURYEA: Do you know Richard Palladino?
- 25 A Yes, I do.

Mantell - Direct - Duryea

1 Q And who is he?

2 A He is the business manager for Laborer's Local 91.

3 Q Do you recall if he was present at this October meeting?

4 A Yes, he was.

5 Q Was he present during the vote about your brother Frank?

6 A Yes, he was.

7 Q Over the course of your membership with the Local, have  
8 you gotten work through the hiring hall?

9 A Yes, I have, always.

10 Q Describe how that works.

11 MR. BOREANAZ: Can we have a time period, please?

12 JUDGE GOLDMAN: No, his employment -- go ahead. You can  
13 follow up.

14 MR. DURYEA: Yes.

15 Q BY MR. DURYEA: During your 27 years of membership in the  
16 local, have you gotten work through the Union's hiring hall?

17 A Yes, I have.

18 Q Okay. Can you describe how that works?

19 A Yes, if you were working on the job, when you get laid off  
20 you come to the union hall and you signed an out-of-work sheet  
21 which they would take your name off of that sheet and would  
22 highlight your name after you signed it and take you off of the  
23 sign-up sheet and put you -- place you on the out-of-work list.

24 Q Are you permitted to seek your own laborer's work if  
25 you're not referred by the local?

Mantell - Direct - Duryea

- 1 A Yes, I am.
- 2 Q What was the last job that you got through the hiring
- 3 hall?
- 4 A It was November of 2015.
- 5 Q Who was that job with?
- 6 A Scrufari Construction.
- 7 Q How long did that job last?
- 8 A Approximately three to four weeks.
- 9 Q Did you have any problems on that job?
- 10 A No, not at all.
- 11 Q Why did your work on that job come to an end?
- 12 A Lack of work.
- 13 Q Did you put your name on the out-of-work list after that
- 14 job ended?
- 15 A Yes, I did.
- 16 MR. DURYEYEA: Let the record reflect that I am showing
- 17 opposing counsel and the witness an exhibit that's been marked
- 18 General Counsel, I'm sorry, General Counsel Exhibit 2.
- 19 Q BY MR. DURYEYEA: Do you recognize this document?
- 20 A Yes, I do.
- 21 Q And what is it?
- 22 A This is a copy of the document that shows the years worked
- 23 and how many hours were turned in by contractors on my behalf
- 24 for working through the years.
- 25 Q Where did you get this document?

Mantell - Direct - Duryea

1 A I have received this document from the union hall.

2 Q When did you get it?

3 A About April 12th of this year.

4 Q So tell me what's listed in the first column there?

5 A The first column is the years that I have worked as a  
6 member.

7 Q So just help me understand. For those years listed, are  
8 those calendar years?

9 A No, they are a fiscal year.

10 Q And when does the Local's fiscal year start and end?

11 A From June -- I believe June 1st to May 31st.

12 Q So when it says 2016 on the last row of the first page  
13 that refers the period from June 6th -- June 2015 through May  
14 of 2016?

15 A Correct.

16 JUDGE GOLDMAN: All right. Say that again. So 2016 ends  
17 on June 1st, 2016?

18 THE WITNESS: Correct.

19 MR. DURYEA: I'm sorry. It --

20 JUDGE GOLDMAN: Well, why don't you ask him?

21 Is that not right?

22 Q BY MR. DURYEA: So when is the last day of fiscal year  
23 2016?

24 A That would be May 31st.

25 JUDGE GOLDMAN: 2016.

~~Mantell - Voir Dire - Boreana~~

1 MR. DURYEA: 2016. Okay.

2 JUDGE GOLDMAN: Okay.

3 MR. DURYEA: I offer into evidence the document that has  
4 been marked as General Counsel Exhibit 2.

5 MR. BOREANAZ: Could I ask a few questions, please?

6 JUDGE GOLDMAN: Voir dire, sure. No, I want to make sure  
7 -- this should be simple now I've got it confused. So 2000 --  
8 the fiscal year -- well, let me ask you.

9 THE WITNESS: Yes.

10 JUDGE GOLDMAN: Fiscal year 2016, when does it begin?

11 THE WITNESS: That would begin June 1st and end on May --

12 JUDGE GOLDMAN: June 1st --

13 THE WITNESS: Of 2015 and then end May 31st --

14 JUDGE GOLDMAN: Okay.

15 THE WITNESS: -- of 2016.

16 JUDGE GOLDMAN: Got it. Okay. Thank you.

17 Do you have voir dire on the document?

18 MR. BOREANAZ: Yes.

19 VOIR DIRE EXAMINATION

20 Q BY MR. BOREANAZ: Mr. Mantell, you've testified you got  
21 this from the union hall, correct?

22 A Yes.

23 Q That's not accurate, is it?

24 A I got this from William Grace.

25 Q Okay. And William Grace name on here, correct?

1 A Yes.

2 Q About the middle of first page is says, "Sincerely yours,  
3 William Grace, Fund Administrator", correct?

4 A Yes.

5 Q Where did you physically get this document from?

6 A I don't remember. Either it was mailed to me -- I was  
7 getting so many documents in the mail about this case.

8 Q Is this about your case?

9 A A lot of documents, yes.

10 Q Okay. So you don't recall where you got this document?  
11 Whether you got it in person or whether you got it from mail?

12 A It might have came in the mail or I might have got it in  
13 person.

14 Q That's my question. It might have dropped from the sky  
15 too, but I'm trying to find out what your testimony is. Do you  
16 recall where you -- how you received it?

17 A I would like to say that I received it in the mail.

18 Q Okay. When you say you would like to --

19 A I'm sorry. I'm sorry. I would like to say I received it  
20 -- I went to the hall and got this printed out.

21 Q Okay. So you would like to say that you went to the hall  
22 to print this out. Is that your testimony?

23 A Yes.

24 Q Okay. Why do you say you would like to say that?

25 A Because I'd like to say it.

Mantell - Voir Dire - Boreanaz

1 Q Okay. William Grace is the fund administrator for the  
2 pension plan, is he not? Did you know that?

3 A Yes.

4 Q Okay. And is there a distinction between the pension plan  
5 and the union that you know of?

6 A Other than they're two separate offices.

7 Q Right.

8 A But it is still one local union.

9 Q Okay. So your understanding is you got this from the  
10 Union, correct?

11 A Yes.

12 Q And you say you got it from the Union and you got it in  
13 person, correct?

14 A Yes.

15 Q And do you know if the information contained on this  
16 accurately reflects what your pension credits should be?

17 A Would you repeat the question, please?

18 Q Okay. This is a record reflecting your pension credits,  
19 investing credit history, true?

20 A Yes.

21 Q Is that what you understand it to be?

22 A Yes, hours -- hours turned in by your contractors.

23 Q Okay. Where does it say that on this document, hours  
24 turned in by contractors?

25 A The second item.

Mantell - Voir Dire - Boreanaz

1 Q Okay. So that says hours turned in by contractors?

2 A It doesn't say by contractors but I know it's by  
3 contractors because that's all I work for.

4 Q What do the asterisks mean? What do those mean?

5 A The asterisks near hours?

6 Q Yeah.

7 A That's just maybe to highlight that those are your hours.  
8 I wouldn't --

9 MR. BOREANAZ: Your Honor, can I just -- I'm just going to  
10 conclude my question.

11 JUDGE GOLDMAN: Well, I don't know what you're going to  
12 ask.

13 MR. DURYEA: This is a document that the witness has  
14 testified that he received. He did not create this document.

15 JUDGE GOLDMAN: I understand.

16 MR. BOREANAZ: I mean, is it not being offered for the  
17 facts contained in the document? Is that why it's being  
18 offered? Why is the document being offered?

19 JUDGE GOLDMAN: Well, you can answer.

20 MR. DURYEA: The document is being offered to demonstrate  
21 the hours that Mr. Mantell has worked.

22 JUDGE GOLDMAN: Do you question the authenticity?

23 MR. BOREANAZ: I don't know. I certainly don't know and  
24 what I was going to say before --

25 JUDGE GOLDMAN: Yeah.

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1 MR. BOREANAZ: -- was that, you know, maybe we could hold  
2 off on this and I can maybe make a telephone call and verify  
3 it. I just had no idea.

4 JUDGE GOLDMAN: Well, are you moving its admission?

5 MR. DURYEA: I am moving it into --

6 JUDGE GOLDMAN: Okay. Well, I'm going to accept it. If  
7 you find something that causes you to dispute the  
8 authenticity --

9 MR. BOREANAZ: That's fine. That makes sense.

10 JUDGE GOLDMAN: It appears to me --

11 MR. BOREANAZ: That makes sense.

12 JUDGE GOLDMAN: It looks authenticate and --

13 MR. BOREANAZ: That makes sense.

14 JUDGE GOLDMAN: -- it looks like it is what it purports to  
15 be.

16 MR. BOREANAZ: Makes sense.

17 MR. DURYEA: It meets the standard and --

18 MR. BOREANAZ: If I find something otherwise, you'll know  
19 about it.

20 JUDGE GOLDMAN: All right. Otherwise, I'm going to  
21 receive this. Okay. General Counsel 2 is in.

22 **(General Counsel Exhibit Number 2 Received into Evidence)**

23 **DIRECT EXAMINATION (CONTINUED)**

24 Q BY MR. DURYEA: So on this document, General Counsel  
25 Exhibit 2, when it states on this document for fiscal year 2016

Mantell - Voir Dire - Boreanaz

1 that you worked 741.25 hours, how many of those hours were  
2 after the last job that you got from the hiring hall?

3 A Seven hours.

4 Q And who did you work those seven hours for?

5 A Scrufari Construction.

6 Q And again, did you get this job through the hiring hall?

7 A No, I did not.

8 Q How did you get the job?

9 A I called Scrufari Construction and spoke to their  
10 estimator, his name is Aaron, explained to him that I haven't  
11 been getting work out of the union. If you guys can give me  
12 any kind of work, one day, some kind of work it would be  
13 greatly appreciated and he did. Within a couple of weeks he  
14 called me and provided me -- he had a one-day job for me.

15 MR. DURYEA: Let the record reflect that I am showing  
16 opposing counsel and the witness a document that has been  
17 marked for identification General Counsel Exhibit 3.

18 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
19 document?

20 A Yes, I do.

21 Q What is it?

22 A This is a copy of the fiscal year from 2016.

23 Q What about the fiscal year 2016?

24 A It shows the hours that I've worked.

25 Q And where did you get this document?

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1 A This document I got from Gina Eppiloni (phonetic).

2 Q And who is she?

3 A She is an employee in the back benefits office.

4 Q Of the --

5 A Of the Local 91, yes.

6 Q When did you get this document?

7 A I got this document on September 27th of this year.

8 Q Is that your handwriting on this document?

9 A No.

10 Q Whose handwriting is that?

11 A Gina Eppiloni.

12 MR. DURYEA: I offer into evidence the document that's

13 been marked as General Counsel Exhibit 3.

14 MR. BOREANAZ: Can I ask a question?

15 JUDGE GOLDMAN: Yes.

16 VOIR DIRE EXAMINATION

17 Q BY MR. BOREANAZ: Do you know what time period is covered

18 by this report? Strike that.

19 A Are you asking me?

20 Q What did you ask for that generated Gina to give you this

21 report? Tell me what you asked for. Don't look at the

22 document. Tell me what you asked for.

23 A I asked her for a copy of my -- the fiscal year from 2016.

24 Q Okay. And in the upper left-hand corner it says Gina is

25 the user, correct?

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1 A Yes.

2 Q And do you know what the fiscal year for 2016, what  
3 information is contained on this document?

4 A Yes.

5 Q What is it?

6 A It contains the hours that were credited to me for that  
7 fiscal year.

8 MR. BOREANAZ: All right. No objection.

9 JUDGE GOLDMAN: All right. Received. General Counsel 3  
10 is received.

11 **(General Counsel Exhibit Number 3 Received into Evidence)**

12 **DIRECT EXAMINATION (CONTINUED)**

13 Q BY MR. DURYEA: So if you look at the last row of this  
14 document it says Scrufari Construction.

15 A Yes.

16 Q Is that that seven-hour job that we were just talking  
17 about?

18 A Yes, it is.

19 Q And this document indicates that that job was worked when?

20 A February 28th, 2016.

21 Q Have you done any work outside the Union's jurisdiction  
22 since the Local stopped referring you out?

23 A Yes, I have.

24 Q And when was that?

25 A June of 2016.

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1 Q And what were you doing?

2 A I got a temporary job as a safety manager at Buffalo Ford  
3 staffing plant. I'm an outside contractor, union contractor  
4 from Ohio.

5 Q How long did that job last?

6 A About 22 weeks.

7 Q And just to clarify, you didn't get this job through the  
8 Union?

9 A No, I did not and it was not through the local union.

10 Q Let me draw your attention to November of 2016, early  
11 November 2016. Did you have a conversation with Richard  
12 Palladino?

13 A Yes, I did.

14 Q And where was this conversation?

15 A In the back of the union hall.

16 Q So why did you go to the union hall that day?

17 A To print out my unemployment history and to get my sub  
18 pay.

19 Q Can you briefly explain what sub pay is?

20 A Supplemental pay is pay that you can get through the union  
21 if you have the proper amount of hours from year-to-year and  
22 you have to actually have unemployment also to be eligible for  
23 supplemental pay.

24 Q So on this visit to the hall, who did you first speak to  
25 about getting your sub pay?

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1 A Maria Montanti (phonetic).

2 Q And who is Maria Montanti?

3 A She's another woman that works in the benefits office in  
4 the back.

5 Q Of the local?

6 A Yes.

7 Q So what happened in this conversation with Ms. Montanti?

8 A She said -- she started to tell me that I didn't qualify  
9 for sub pay even though I had the hours worked from 2015. I  
10 had the proper amount of hours but since I didn't have --

11 JUDGE GOLDMAN: I'm sorry.

12 THE WITNESS: I'm sorry.

13 JUDGE GOLDMAN: That's all right. That's what she told  
14 you, that even though you had hours or this is what you're  
15 saying? Well, just -- I want to make sure I understand what  
16 she told you.

17 THE WITNESS: Yes.

18 JUDGE GOLDMAN: Okay.

19 THE WITNESS: What she told me, Your Honor, was that I did  
20 have the 550 hours from the fiscal year of 2015's fiscal year  
21 to qualify but I did not have a union contractor turn in any  
22 benefits for me for I believe it was a six-month period she  
23 said and that I had six months to get some kind of union  
24 employment, whether it was a one-day job, two hours, any kind  
25 of union employment. When the contractor turned in my benefits

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1 to the union hall then I would be eligible and I would be able  
2 to get my sub pay.

3 Q BY MR. DURYEA: So what did you do next after this  
4 conversation with Ms. Montanti?

5 A I went to speak to Mr. Palladino.

6 Q Was anyone else present when you spoke to Mr. Palladino?

7 A Yes.

8 Q Who was that?

9 A Matthew Shavi (phonetic).

10 Q And who is Matthew Shavi?

11 A He's a retired e-board member.

12 Q Did Mr. Shavi participate in the conversation?

13 A No, not at all.

14 Q How long did you -- did this conversation take place?

15 A A few minutes.

16 Q So what did you say to Mr. Palladino?

17 A I first started off by telling him that I was number two  
18 on the list and I haven't received a call all year to go to  
19 work and that I needed work. I wasn't even eligible to get sub  
20 pay. I haven't had any work. And when I told him where I was  
21 on the list he began to ridicule me about my brother Frankie.  
22 And I responded by telling him that I'm Ron Mantell, not Frank  
23 Mantell. I'm coming here to ask you for a job and -- and he  
24 says that no contractors have been calling for me and I just  
25 didn't feel like I was going to get any help from Mr. Palladino

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1 at that point. And he also stated that I was allowed to find  
2 my own work. It wasn't his job to find me a job because no  
3 contractors were calling.

4 Q Did Mr. Palladino say anything else to you that you  
5 recall?

6 A Yes, he then began to say that he knew that I was planning  
7 on calling the National Labor Relations Board and if I did that  
8 that he would bring me up on charges.

9 Q Now you mentioned that Mr. Palladino said that you had not  
10 been getting referred because contractors had not been asking  
11 for you?

12 A Yes.

13 MR. BOREANAZ: That was a leading question but that's what  
14 he did testify to.

15 Q BY MR. DURYEA: So based on your 27 years of experience  
16 using the hiring hall, is it your experience that the only time  
17 the Local sends a member out is if a contractor comes and asks  
18 -- comes and asks for him by name?

19 A No.

20 Q So during this conversation with Mr. Palladino, did he  
21 offer you work?

22 A No, he did not.

23 Q Anytime subsequent to that conversation has he offered you  
24 work?

25 A No, he has not.

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1 Q Did you speak to anyone in the International about this  
2 conversation you had with Mr. Palladino?

3 A Yes, I did.

4 Q Who did you speak to?

5 A I spoke to Chris Sabatoni.

6 Q And who is Chris Sabatoni?

7 A He is an international representative for the union.

8 Q And when did this conversation take place?

9 A About -- I want to say maybe four or five days after the  
10 conversation with Mr. Palladino.

11 Q Did you speak in person or on the phone?

12 A On the phone.

13 Q What do you say to Mr. Sabatoni?

14 A I explained to Mr. Sabatoni that I had not received any  
15 work out of the union hall, that I believe I'm being punished  
16 because of my brother, of the fallout between my brother and  
17 Richard. Where I was on the list at the time, I was number two  
18 and I hadn't received a call in a year-and-a-half to go to  
19 work. I was number two at that time. He said that he would  
20 place a call --

21 MR. BOREANAZ: Object to what he said.

22 JUDGE GOLDMAN: Overruled.

23 MR. BOREANAZ: It's hearsay.

24 JUDGE GOLDMAN: Overruled.

25 MR. BOREANAZ: You might recall during our pre-hearing

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1 conference that I didn't know if he would be testifying about  
2 statements made to somebody that was Washington, D.C. This is  
3 the testimony that I --

4 JUDGE GOLDMAN: Yeah, but I mean it's relevant to their  
5 case. It's --

6 MR. BOREANAZ: I don't know that it is relevant.

7 JUDGE GOLDMAN: I mean, they think it's relevant, let me  
8 put it that way, and I can't tell them it's not. It's --

9 MR. BOREANAZ: Well, why wouldn't they --

10 JUDGE GOLDMAN: What are you offering -- you're not  
11 offering it for the truth of the matter, you're offering it for  
12 what he was told? I don't know. What are you offering? Is he  
13 an agent --

14 MR. BOREANAZ: Why wouldn't they call him as a witness  
15 then?

16 JUDGE GOLDMAN: -- on this phone?

17 MR. BOREANAZ: Sabatoni?

18 MR. DURYEA: I'm just offering it to give a complete  
19 picture of events.

20 JUDGE GOLDMAN: I'm going to take it. I mean, that's what  
21 he was told, what he says he was told. You can --

22 MR. BOREANAZ: It's hearsay what he says he was told.

23 JUDGE GOLDMAN: It depends what it's offered for.

24 MR. DURYEA: It's not being offered --

25 MR. BOREANAZ: If it's being offered for background I

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1 don't know what probative value it would have to the charges  
2 and --

3 MR. DURYEA: Yeah, it's not being -- it's being offered  
4 for background, Your Honor.

5 JUDGE GOLDMAN: Okay. Well, go ahead.

6 MR. BOREANAZ: Over my objection, please.

7 JUDGE GOLDMAN: Noted.

8 Q BY MR. DURYEA: So you say that you said to Mr. Sabatoni  
9 that you felt you were being punished because of your brother?

10 MR. BOREANAZ: Object to the leading. I think the  
11 question properly should be what did Mr. Sabatoni say to you?

12 JUDGE GOLDMAN: Well, we left off where you told him you  
13 believed you were being punished. You were number two on the  
14 list.

15 THE WITNESS: Yes.

16 JUDGE GOLDMAN: Okay.

17 THE WITNESS: And --

18 JUDGE GOLDMAN: What did he say?

19 THE WITNESS: And then he said that he would place a call  
20 to Richard on my behalf.

21 Q BY MR. DURYEA: And did he get back to you later on?

22 JUDGE GOLDMAN: Did he say anything else?

23 THE WITNESS: He just said that he would just try to call  
24 Richard and find out what's going on to see if he can get me to  
25 go to work or --

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1 JUDGE GOLDMAN: Okay.

2 Q BY MR. DURYEA: And when did you hear -- did you hear back  
3 from him?

4 A Yes, I did.

5 Q When was that?

6 A Approximately another four or five days later.

7 Q What did he tell you?

8 A He said that he spoke to Richard and that Richard said he  
9 hasn't been able to place me on a job and that he was -- he was  
10 giving me advice. He said his advice to me is that I can go  
11 and find my own work.

12 Q You're saying this was Mr. Sabatoni saying this?

13 A Yes.

14 Q Okay. So did you go and find your own work?

15 MR. BOREANAZ: I'm going to object at this point. It's  
16 clearly not for background. They're trying to impute the  
17 statement to my client, Mr. Palladino.

18 JUDGE GOLDMAN: Well --

19 MR. BOREANAZ: And I just point that out as a further  
20 reference to my objection. Obviously you can sort it all out.

21 JUDGE GOLDMAN: Yeah, I agree. Assuming that this fellow  
22 is -- I don't think he's alleged as an agent.

23 MR. DURYEA: No, he's not and this is --

24 JUDGE GOLDMAN: Then I --

25 MR. BOREANAZ: This is the extent of the questioning on

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1 this.

2 JUDGE GOLDMAN: Yeah, but I think it might have  
3 explanatory power later even if it's hearsay. I'm sure we'll  
4 hear from your witness.

5 MR. BOREANAZ: I just -- you know, as you know --

6 JUDGE GOLDMAN: It seems to me it's relevant.

7 MR. BOREANAZ: -- bringing a witness in from Washington  
8 would cost money.

9 JUDGE GOLDMAN: Yeah, I understand. We went through this.  
10 I --

11 MR. BOREANAZ: And, you know --

12 JUDGE GOLDMAN: It's our system, especially if, you know,  
13 if you want him here, he has to be here.

14 MR. BOREANAZ: Well, I understand that but you're in  
15 control of --

16 JUDGE GOLDMAN: But you're interrupting direct to complain  
17 about the fact that you have to -- you might want to bring a  
18 witness up from Washington, D.C.

19 MR. BOREANAZ: Okay.

20 JUDGE GOLDMAN: I don't want to do that now. I don't even  
21 want to do it. I mean, I don't understand. It's not really an  
22 objection and we all have to come from someplace and we have to  
23 get this hearing done.

24 MR. BOREANAZ: But you're the one who decides what  
25 evidence comes in and --

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1 JUDGE GOLDMAN: Well, I am allowing a conversation he  
2 had --

3 MR. BOREANAZ: I understand.

4 JUDGE GOLDMAN: -- with an international representative  
5 about these events. The weight of that I'll have to decide.  
6 But --

7 MR. BOREANAZ: I understand that. I understand that and  
8 my point is this is that it's -- first it was being offered for  
9 background information and now with this second series of  
10 questions it tends to be offered for after you made a ruling,  
11 now being offered to impute some information about what my  
12 client said to somebody else now turns into double hearsay.  
13 And, you know, if you could give me some idea as to what weight  
14 you might give it then I can decide whether or not to spend the  
15 Union's funds to spend multiple thousands of dollars to bring a  
16 witness in on a tangential issue regarding, quote,  
17 "background".

18 JUDGE GOLDMAN: Well, let me ask General Counsel.  
19 What is it showing? Was it just corroborative?

20 MR. DURYEA: This is not being --

21 JUDGE GOLDMAN: Was it -- what is the point of it?

22 MR. DURYEA: I'm sorry. This not being offered to impute  
23 a statement to Mr. Palladino.

24 JUDGE GOLDMAN: This is what he's saying he was told.  
25 Obviously it doesn't prove that he -- that Mr. Palladino said

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1 it, said that to --

2 MR. DURYEA: That's correct.

3 JUDGE GOLDMAN: -- Mr. Sabatoni. That's what hearsay is  
4 and I think that's -- you know, that's what it is. It doesn't  
5 prove that's what he was told, what the witness was told or  
6 it's evidence of what the witness -- direct evidence of what  
7 the witness was told.

8 MR. BOREANAZ: Right. These are just practical things  
9 that I have to deal with on my side and I get that you've got  
10 to make decisions and I know that there's a tendency to err on  
11 the side of you've been doing this for a long time, you can  
12 sort through a waif of evidence from time to time, but there  
13 are implications that I'm having to deal with.

14 JUDGE GOLDMAN: Yes, I'm sure. I don't disagree.

15 Go ahead.

16 Q BY MR. DURYEA: So after this conversation with Mr.  
17 Sabatoni, did you in fact go and find your own work?

18 A Yes, I did.

19 Q And when was that?

20 A February 1st of 2017.

21 Q And who was the employer?

22 A Once again, Scrufari Construction.

23 Q And how did you get this job?

24 A Once again, I called and spoke to Aaron, their estimator,  
25 and within a couple weeks he called me and asked me to go to

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1 the job on February 1st, one-day job.

2 Q And where was this one-day job?

3 A At the Niagara Falls Bridge Commission.

4 Q What did you do on that job?

5 A I placed caulk inside of concrete saw cuts.

6 Q What are concrete saw cuts?

7 A After you pour a pad of concrete -- the newer method  
8 nowadays is they call it saw cutting, come in while the  
9 concrete is still kind of green and they saw cut and then after  
10 it dries those saw cuts need to be caulked.

11 Q So I believe you said this did end up being a one-day job?

12 A Yes, only six hours.

13 Q So when you showed up for work that day and saw that you  
14 were assigned to caulking the concrete, was it your  
15 understanding that this was laborer's work?

16 A No.

17 Q How did you know that?

18 A Being a 27-year member, former steward a lot on jobs, I  
19 know that caulking is not in our contract, never been in our  
20 contract. It's exclusively in the bricklayers and cement  
21 masons' contract.

22 MR. DURYEA: Let the record reflect that I am showing  
23 opposing counsel and the witness an exhibit that has been  
24 marked General Counsel Exhibit 4 please.

25 Q BY MR. DURYEA: Do you recognize this document?

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1 A Yes, I do.

2 Q And what is it?

3 A This is a copy of the building agreement for which I work  
4 under.

5 Q Is this the contract that governs the relationship between  
6 the local and Scrufari Construction?

7 A Yes.

8 MR. DURYEA: I offer into evidence the document marked  
9 General Counsel Exhibit 4.

10 MR. BOREANAZ: No objection.

11 JUDGE GOLDMAN: Any dispute? Okay. That's received.

12 **(General Counsel Exhibit Number 4 Received into Evidence)**

13 JUDGE GOLDMAN: Let me quickly go back to this thing with  
14 -- this conversation with -- is it Sabatino?

15 MR. DURYEA: Sabatoni.

16 JUDGE GOLDMAN: Sabatoni. Do you agree it's hearsay?

17 MR. DURYEA: I do agree that it is hearsay.

18 JUDGE GOLDMAN: Okay. So it doesn't prove that -- what  
19 we're meaning is that it doesn't prove that Mr. Palladino said  
20 that, said to Mr. Sabatoni what he told the witness he said.

21 MR. DURYEA: That's correct.

22 JUDGE GOLDMAN: Okay.

23 MR. DURYEA: It does not prove what -- I don't know if  
24 that helps.

25 JUDGE GOLDMAN: The GC agrees that those comments are

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1 hearsay. It's evidence of what the witness was told by Ms.  
2 Sabatoni, told by Mr. Sabatoni, but it does not -- it is  
3 hearsay evidence. It is not direct evidence of what Mr.  
4 Palladino told Mr. Sabatoni.

5 MR. BOREANAZ: I understand. Thank you for that  
6 clarification.

7 Q BY MR. DURYEA: So the contract that we're looking at  
8 here, are you familiar with the content of this contract?

9 A Yes, I am.

10 Q Okay. And how are you -- how did you become familiar with  
11 it?

12 A By referring to the contract over the years and just being  
13 a steward on the job, I know what is our work and what's not  
14 our work at the jobs.

15 Q So what is it in the contract that bears on whether or not  
16 caulking is laborer's work?

17 A I believe it's Article 6, Jurisdiction of Work in the  
18 contract. If you look through the jurisdiction of work,  
19 caulking is not in there, caulking concrete is not in there.  
20 It's never been in there.

21 Q So for this one-day job for Scrufari when you were  
22 caulking, is it your understanding that a steward for the  
23 laborers needed to be on this job?

24 A No.

25 Q And why not?

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1 A According to the agreement, it states under job steward  
2 that the job steward needs to be present on the job when  
3 laborer's work is being performed on the job.

4 Q And so why didn't a steward -- why did you not understand  
5 a steward needed to be there that day?

6 A Because I was not performing laborer's work.

7 Q Have you done any other work since this one-day Scrufari  
8 job?

9 A Yes.

10 Q What was that?

11 A A one-day job for a property maintenance company.

12 Q Did you get this job through the Union?

13 A No, this was not through the Union.

14 JUDGE GOLDMAN: I'm going to interrupt. I have a  
15 question.

16 MR. DURYEA: Yes, sir.

17 JUDGE GOLDMAN: It's sort of a background question. In a  
18 case where work is covered by the agreement, forget caulking,  
19 just --

20 THE WITNESS: Yes.

21 JUDGE GOLDMAN: -- something you would agree is --

22 THE WITNESS: Yes, sir.

23 JUDGE GOLDMAN: -- covered then the rule in the contract  
24 is there has to be steward present?

25 THE WITNESS: Yes.

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1 JUDGE GOLDMAN: Okay.

2 THE WITNESS: If laborer's work is being performed on the  
3 job.

4 JUDGE GOLDMAN: And is that an extra person that would  
5 have to be hired? In addition to the people doing the  
6 laborer's work they would have to -- the contractor would have  
7 to hire a steward?

8 THE WITNESS: Yes. Yes.

9 JUDGE GOLDMAN: Or they would make one of the --

10 THE WITNESS: They would have to call the hall and Richard  
11 Palladino makes the stewards --

12 JUDGE GOLDMAN: Okay. So one of them would be designated  
13 a steward or one of the people who are steward would be  
14 assigned to that job?

15 THE WITNESS: If there was a steward present on the job,  
16 yes.

17 JUDGE GOLDMAN: Okay. All right. I just -- background  
18 for me.

19 THE WITNESS: The job was already turned over to the  
20 Bridge Commission. I went in as a -- it was punch list like.

21 JUDGE GOLDMAN: I wasn't -- yeah. I wasn't asking about  
22 your specific work --

23 THE WITNESS: Oh, okay.

24 JUDGE GOLDMAN: -- as far as just as background for me.

25 MR. DURYEA: Let the record reflect that I'm showing

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1 opposing counsel and the witness an exhibit that's been marked  
2 for identification General Counsel Exhibit 5. There it is.

3 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
4 document?

5 A Yes, I do.

6 Q And what is it?

7 A This is a copy of the actual calendar year from 2017.

8 Q And what does it reflect about the calendar year of 2017?

9 A It reflects the hours worked for 2017.

10 Q And where did you get this document?

11 A I also received this document from Gina Eppiloni.

12 Q When did you get it?

13 A I got this document on September 25th, 2017.

14 Q Is that your handwriting on it?

15 A No, it's not.

16 Q And whose handwriting is that?

17 A Gina Eppiloni.

18 MR. DURYEA: I offer into evidence the document that's  
19 been marked as General Counsel Exhibit 5.

20 JUDGE GOLDMAN: Any objection?

21 MR. BOREANAZ: Just a couple questions.

22 **VOIR DIRE EXAMINATION**

23 Q BY MR. BOREANAZ: Do you have GC-3 in front of you?

24 A Yes.

25 Q You said GC-3 is the fiscal year and GC-5 is the calendar

1 year?

2 A Yes, that's correct.

3 Q And you said that GC-5 is the calendar year 2007?

4 A 2017.

5 Q Okay. And GC-3 is the calendar year -- or is the fiscal  
6 year 2016, right?

7 A Yes.

8 Q And you said that Gina Eppiloni gave this GC-5 to you on  
9 September 25th, 2017?

10 MR. DURYEA: Asked and answered, Your Honor.

11 MR. BOREANAZ: It is asked and answered. That's true.

12 JUDGE GOLDMAN: I'm going to overrule it.

13 MR. BOREANAZ: I'll withdraw the question. No more  
14 questions. I don't object to the document.

15 JUDGE GOLDMAN: All right. Thank you. It's received.

16 **(General Counsel Exhibit Number 5 Received into Evidence)**

17 JUDGE GOLDMAN: Who does this Gina work for?

18 THE WITNESS: Gina works for the Laborer's Local 91.

19 MR. BOREANAZ: That's not accurate.

20 JUDGE GOLDMAN: Okay. Well, you can -- I asked and that's  
21 his understanding.

22 **DIRECT EXAMINATION (CONTINUED)**

23 Q BY MR. DURYEA: So let me direct your attention to spring  
24 of this year. Did the Union bring you up on charges?

25 A Yes, they did.

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1 Q Have you ever been -- had you ever been brought up on  
2 charges before that?

3 A Never.

4 MR. DURYEA: Let the record reflect that I'm showing  
5 opposing counsel and the witness an exhibit that's been marked  
6 as General Counsel Exhibit 6.

7 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
8 document?

9 A Yes, I do.

10 Q And what is it?

11 A This is a letter from Kevin Hansley (phonetic), Recording  
12 Secretary, informing me that I was being brought up on charges.

13 Q Kevin Hansley worked for the Local?

14 A Yes.

15 Q When did you get this letter?

16 A I received this letter -- I want to say the exactly date  
17 -- I mean, I want to say looked in -- about a week before the  
18 trial.

19 Q When was the trial?

20 A The trial was April 8th of 2017.

21 Q So you received this document about a week before that?

22 A Yes.

23 Q Is that your handwriting on the second page?

24 A Yes.

25 MR. DURYEA: I offer into evidence the document that's

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1 been marked as General Counsel Exhibit 6.

2 VOIR DIRE EXAMINATION

3 Q BY MR. BOREANAZ: Do you know whose handwriting that is on  
4 the second page? Is that your handwriting? April 8th, trial,  
5 9:30, hall?

6 A Yes.

7 Q Okay. You said that you received this document a week  
8 before April 8th, correct?

9 A No, I'm sorry. This document --

10 Q That's not accurate is it?

11 A This is the first document that came informing me of my --  
12 of the hearing on March 25th.

13 Q Okay. So when you testified that you received this a week  
14 before April 8th that wasn't accurate, correct?

15 A No. Like I said, I received so many documents that were  
16 coming in the mail.

17 JUDGE GOLDMAN: Just answer his question.

18 THE WITNESS: Yes. Yes.

19 Q BY MR. BOREANAZ: And you testified that Kevin -- you  
20 received this from Kevin Hansley, correct? Right?

21 A Yes.

22 Q And you said that he works for the Union, correct?

23 A Yes.

24 Q Is he an employee of the Union?

25 A He's a member of Local 91.

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1 Q Is he an employee of the Union to your knowledge?

2 A Yes, he's an employee of the Union.

3 Q Okay. In what capacity is he employed? Is he a business  
4 agent? Is he a business representative?

5 A He was the recording secretary.

6 Q Okay. So as a recording secretary, your testimony is he's  
7 an employee, right?

8 A Yes.

9 Q Okay. How did you receive this document?

10 A This document was received certified mail.

11 Q And it referenced a hearing scheduled for March 25th,  
12 correct?

13 A Yes.

14 Q And you were not available for March 25th, right?

15 JUDGE GOLDMAN: We'll wait for cross on that.

16 MR. BOREANAZ: All right.

17 JUDGE GOLDMAN: It's beyond the scope of voir dire.

18 Q BY MR. BOREANAZ: So do you know exactly when you received  
19 this document that you wrote on here 4/8 trial on the second  
20 page?

21 A I believe it would be March 28th, 2016.

22 Q You believe you received this on March 28th?

23 A Yes.

24 Q Okay. Why do you think you received this document, GC-6,  
25 on March 28th?

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1 A Because I was out of town and when I got home I went  
2 and --

3 Q You were out of town?

4 A Yes.

5 Q When?

6 A I was out of town for a couple weeks before that.

7 Q I understand that. When you were out of town? Do you  
8 know what dates you were out of town?

9 A Yes, I was out of town from February 24th to March 25th.

10 Q Were you on vacation?

11 MR. DURYEA: Your Honor, this is not voir dire.

12 JUDGE GOLDMAN: I agree. Sustained.

13 Q BY MR. BOREANAZ: So you received this GC-6 when you were  
14 out of town, right?

15 A Yes.

16 Q You received it through the mail, correct?

17 A Yes.

18 Q Certified return receipt, correct? Do you know?

19 A I don't know about a return receipt. It was a certified  
20 letter.

21 Q A certified letter. And you think you received it on the  
22 28th --

23 MR. DURYEA: Asked and answered, Your Honor.

24 MR. BOREANAZ: -- of March? I know but there's been a  
25 few --

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1 JUDGE GOLDMAN: It's okay. When do you think you received  
2 it?

3 THE WITNESS: On March 28th.

4 JUDGE GOLDMAN: Okay.

5 MR. BOREANAZ: All right. I don't have any further  
6 questions regarding this document. I do not object to its  
7 admittance in evidence.

8 JUDGE GOLDMAN: Okay. General -- have you moved -- well,  
9 you're moving it -- you're moving its admission, I think.

10 MR. DURYEA: I am moving it into evidence, yes.

11 JUDGE GOLDMAN: So I'm going to receive General Counsel's  
12 6.

13 **(General Counsel Exhibit Number 6 Received into Evidence)**

14 JUDGE GOLDMAN: Go ahead.

15 MR. DURYEA: Let the record reflect that I'm showing  
16 opposing counsel and the witness a document that has been  
17 marked for identification as General Counsel Exhibit 7.

18 **DIRECT EXAMINATION (CONTINUED)**

19 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
20 document?

21 A Yes, I do.

22 Q And what is it?

23 A This is a letter from Richard Palladino to recording  
24 secretary Mr. Hansley informing him that he wanted to file  
25 charges on me.

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1 Q How did you receive this document?

2 A Also certified mail.

3 Q From who?

4 A From the local union.

5 Q When did you receive it?

6 A This letter I received -- I don't know the exact date.

7 MR. DURYEA: Let the record reflect that he's reviewing  
8 the document to refresh his recollection.

9 JUDGE GOLDMAN: Yes.

10 Q BY MR. DURYEA: Do you remember about when you received  
11 this approximately?

12 A Yeah. I would say it's about -- I want to say about a  
13 week before the trial.

14 JUDGE GOLDMAN: The April trial or the --

15 THE WITNESS: Yeah, the April 8th trial. Or I might --

16 JUDGE GOLDMAN: So it was after you received General  
17 Counsel's 5 -- 6? And I see General Counsel's 6 was the first  
18 letter that said you got to --

19 THE WITNESS: The one that I was on --

20 JUDGE GOLDMAN: You testified that it says a March 25th  
21 trial date. You received it and did you receive this General  
22 Counsel's 7 letter later or earlier or --

23 THE WITNESS: I would say I received it before, I would  
24 imagine.

25 JUDGE GOLDMAN: But you don't know?

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1 THE WITNESS: I don't remember exactly the dates.

2 JUDGE GOLDMAN: Okay.

3 THE WITNESS: Because, like I said, these letters were  
4 coming in and --

5 JUDGE GOLDMAN: I understand.

6 THE WITNESS: -- I was putting them in a binder and --

7 JUDGE GOLDMAN: Okay.

8 Q BY MR. DURYEA: Is that your handwriting -- I'm sorry. Is  
9 that your underlining on the first page?

10 A Yes, it is my underlining. Yes.

11 Q I offer into evidence the document that's been marked as  
12 General Counsel Exhibit 7.

13 MR. BOREANAZ: I have no objection.

14 JUDGE GOLDMAN: Okay. It's received. This is the letter  
15 dated March 3rd.

16 **(General Counsel Exhibit Number 7 Received into Evidence)**

17 MR. DURYEA: Let the record reflect that I am showing  
18 opposing counsel and the witness a document that's been marked  
19 for identification as General Counsel 8.

20 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
21 document?

22 A Yes, I do.

23 Q And what is this?

24 A This is a letter informing that I missed the original  
25 hearing and that they were rescheduling the hearing for April

1 8th of 2017.

2 Q And how did you get this document?

3 A This document also came by certified mail.

4 Q From where?

5 A From the local union.

6 Q Do you remember when you received it?

7 A Yeah, March 28th on this one.

8 MR. DURYEA: I offer into evidence the document marked for  
9 -- the document marked General Counsel Exhibit 8.

10 MR. BOREANAZ: Questions?

11 JUDGE GOLDMAN: If it's necessary for question of the  
12 admission of the document.

13 **VOIR DIRE EXAMINATION**

14 Q BY MR. BOREANAZ: Your testimony --

15 JUDGE GOLDMAN: Anything else you can hold for cross.

16 Q BY MR. BOREANAZ: Your testimony is that you received this  
17 document after you missed the original hearing, right?

18 A Yes.

19 Q That can't be true, can it? Will you read the document?

20 A As far as I can see this is true.

21 MR. BOREANAZ: No further questions.

22 JUDGE GOLDMAN: Okay. It's moving --

23 MR. DURYEA: Yes, I offer this into evidence. Yes, Your  
24 Honor.

25 JUDGE GOLDMAN: General Counsel's 8 is admitted.

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1 (General Counsel Exhibit Number 8 Received into Evidence)

2 DIRECT EXAMINATION (CONTINUED)

3 Q BY MR. DURYEA: Did the Union hold a hearing on the  
4 charges against you?

5 A Yes, they did.

6 Q And when was that?

7 A April 8th, 2017.

8 Q Let the record reflect that I am showing opposing counsel  
9 and the witness a document marked for identification as General  
10 Counsel's Exhibit 9.

11 JUDGE GOLDMAN: Let me make a stab at a suggestion. Is  
12 there any way we can stipulate in some of the documents that  
13 are -- you know, whether it's the trial record or the decision  
14 of the Board? I assume these minutes have some official  
15 imprimatur of the Local. Is that possible to do?

16 MR. DURYEA: I am certainly not opposed to stipulating  
17 them in.

18 JUDGE GOLDMAN: If you have three or four that we could --  
19 if they're sort of -- you know, sort of correspondence from the  
20 Local about the case. Things that are not really in dispute.

21 MR. DURYEA: Yeah, I've got --

22 MR. BOREANAZ: I think we're close to the end of the  
23 documents.

24 MR. DURYEA: Yeah.

25 JUDGE GOLDMAN: See, that I don't know.

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1 MR. DURYEA: We are close to the end, yeah.

2 JUDGE GOLDMAN: Okay. That's fine then. See, you do know  
3 more than me. For all I know there's 200 of them. I don't  
4 know. I have no way to know. Okay.

5 Q BY MR. DURYEA: Do you recognize this document?

6 A Yes, I do.

7 Q And what is it?

8 A This is a document of the minutes of the hearing from my  
9 trial with Local 91.

10 Q And how did you receive this document?

11 A I want to believe this was certified mail also.

12 Q From who?

13 A From the local union.

14 Q Do you remember approximately when you got this?

15 A Approximately a week after the trial?

16 MR. DURYEA: I offer into evidence the document marked  
17 General Counsel Exhibit 9.

18 MR. BOREANAZ: May I have a second, please?

19 JUDGE GOLDMAN: Sure.

20 VOIR DIRE EXAMINATION

21 Q BY MR. BOREANAZ: Mr. Mantell, does the minutes reflected  
22 here in GC-9 accurately reflect what occurred at the hearing?

23 MR. DURYEA: General Counsel this is not -- I'm sorry.  
24 Your Honor, this is not voir dire.

25 JUDGE GOLDMAN: What's it being offered for?

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1 MR. DURYEA: It's being offered as a record of what  
2 happened at the hearing, a document that was created by the  
3 Union as a record of what happened at the hearing.

4 MR. BOREANAZ: Okay. I think my question is appropriate  
5 given the reason.

6 JUDGE GOLDMAN: Well, I actually don't.

7 MR. BOREANAZ: It's a simple question.

8 JUDGE GOLDMAN: I think it's a very hard question and it  
9 requires someone to -- I don't know how long this trial took  
10 but let's say half-an-hour, an hour.

11 MR. BOREANAZ: He's already indicated to the --

12 JUDGE GOLDMAN: I don't know that you can sort of compare  
13 it --

14 MR. BOREANAZ: -- international union that this does  
15 reflect accurately what happened at the hearing.

16 JUDGE GOLDMAN: I don't know about that.

17 MR. BOREANAZ: I do.

18 JUDGE GOLDMAN: Okay.

19 MR. BOREANAZ: That's why I asked the question. I'm  
20 getting --

21 JUDGE GOLDMAN: Well, I --

22 MR. BOREANAZ: Let me finish, please. I'm just saying  
23 that as a proffer as to why I'm asking the question.

24 JUDGE GOLDMAN: Okay. Thank you.

25 MR. BOREANAZ: It's not out of the blue or anything like

1 that.

2 JUDGE GOLDMAN: I think it's unrelated to voir dire and I  
3 would likely sustain an objection to the question even on  
4 cross. You can ask him what happened at the meeting but I feel  
5 that it is beyond any witness to compare every line of this  
6 single-spaced, two-page account of the meeting and say whether  
7 everything in there is accurate. What you can ask him is about  
8 what happened at the meeting if you need to.

9 MR. BOREANAZ: I respectfully disagree with your --

10 JUDGE GOLDMAN: That's fine. That's how it works.

11 MR. BOREANAZ: -- recitation of what is permissible and  
12 what is not but at this point I guess you're sustaining the  
13 objection to the question.

14 JUDGE GOLDMAN: Of the voir dire, yes. Any objection to  
15 these coming in?

16 MR. BOREANAZ: I object on the basis as to why they're  
17 being offered and the fact that I couldn't get my question  
18 answered. So I object.

19 JUDGE GOLDMAN: Okay. All right. Well, it's overruled.  
20 Your objection is overruled and General Counsel's 9 is  
21 admitted.

22 **(General Counsel Exhibit Number 9 Received into Evidence)**

23 JUDGE GOLDMAN: This is the Local's account, correct?

24 MR. DURYEA: It is.

25 JUDGE GOLDMAN: Yeah, it will just be the authenticity

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1 that it's the local's account --

2 MR. DURYEA: I believe it is.

3 JUDGE GOLDMAN: -- of the trial. Okay.

4 MR. DURYEA: I believe it is.

5 JUDGE GOLDMAN: All right. Well, that's what it looks  
6 like.

7 MR. DURYEA: It does.

8 JUDGE GOLDMAN: That's what I'm going to take it as. It's  
9 meant -- it's the Local's official minutes. It's hearing  
10 finding decision and contains the information it contains.  
11 Okay. So I'm going to receive that.

12 **DIRECT EXAMINATION (CONTINUED)**

13 Q BY MR. DURYEA: Did you offer a statement at the hearing?

14 A Yes, I did.

15 MR. DURYEA: Let the record reflect that I'm showing  
16 opposing counsel and the witness a document that's been marked  
17 for identification as General Counsel Exhibit 10.

18 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
19 document?

20 A Yes, I do.

21 Q And what is it?

22 A This is the document that I read aloud at my trial.

23 Q Did you also provide the written document itself to the  
24 trial board?

25 A Yes, I provided a copy to each trial board member and

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1 asked them to follow along as I read it.

2 Q Is that your handwriting on page 1?

3 A Yes.

4 MR. DURYEA: I offer into evidence the document that's  
5 been marked as General Counsel Exhibit 10.

6 MR. BOREANAZ: No objection based upon the questions and  
7 the answers provided by this witness.

8 JUDGE GOLDMAN: Okay. Then I will receive it. General  
9 Counsel's 10 is admitted or received.

10 **(General Counsel Exhibit Number 10 Received into Evidence)**

11 Q BY MR. DURYEA: So at some point did you learn of the  
12 trial board's ruling on the charges against you?

13 A Yes, I did.

14 Q And when did you learn that?

15 A They took a brief five to ten minute recess and came back  
16 and found me guilty.

17 Q Did they ever put that ruling in writing?

18 A Yes, they did.

19 Q And what was the ruling?

20 A Guilty.

21 Q Was there a penalty involved?

22 A Yes, a \$500 fine and a six-month suspension.

23 MR. DURYEA: Let the record reflect that I'm showing  
24 opposing counsel and the witness an exhibit that's been marked  
25 by identification as General Counsel's Exhibit 11.

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1 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
2 document?

3 A Yes, I do.

4 Q And what is it?

5 A This is a letter from Recording Secretary Hansley, Kevin  
6 Hansley informing me that I was found guilty.

7 Q And when did you receive this document?

8 A I want to say a few days after the trial.

9 MR. DURYEA: I offer into evidence the document that's  
10 been marked as General Counsel Exhibit 11.

11 JUDGE GOLDMAN: Any objection?

12 MR. BOREANAZ: No.

13 JUDGE GOLDMAN: It's received.

14 **(General Counsel Exhibit Number 11 Received into Evidence)**

15 Q BY MR. DURYEA: Did you appeal the verdict against you?

16 A Yes, I did.

17 MR. DURYEA: Let the record reflect that I'm showing  
18 opposing counsel and the witness a document that has been  
19 marked for identification as General Counsel Exhibit 12.

20 Q BY MR. DURYEA: Mr. Mantell, do you recognize this  
21 document?

22 A Yes, I do.

23 Q And what is it?

24 A This is my appeal that I sent to international union.

25 Q Do you remember when you sent this document?

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1 A This document was sent certified mail on April 26th to the  
2 Washington, D.C. International Union's office.

3 Q Was that April 26th of this year?

4 A Yes.

5 MR. DURYEA: I offer into evidence the document that's  
6 been marked as General Counsel Exhibit 12.

7 MR. BOREANAZ: Just give me a second.

8 JUDGE GOLDMAN: Sure.

9

VOIR DIRE EXAMINATION

10 Q BY MR. BOREANAZ: Can I just draw your attention to your  
11 Exhibit D as in dog to this GC-12? GC -- this Exhibit D, the  
12 first page of Exhibit D to GC-12 contains a letter dated April  
13 8th, 2017 to Ron Mantell from Kevin Hansley, correct? And this  
14 is the notice of the decision by the trial board that you were  
15 in violation of the local agreement, correct?

16 A Yes.

17 Q The next page of GC-12 and this Exhibit D as in dog is a  
18 single sheet that on the top says "trial board, trial date  
19 April 8th, 2017" and then the names of the trial board members  
20 and then the word guilty next to each one, correct?

21 A Yes.

22 Q If you look at GC-11, GC-11 and this first page of Exhibit  
23 D to GC-12 are the same thing, correct?

24 A I'm sorry. Mine are not marked -- oh back here. Yes, I  
25 would believe the same.

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1 Q All right. And then so that the second page of Exhibit D  
2 to GC-12, this sheet with the trial board members names and  
3 guilty next to it, did this sheet come with GC-11?

4 A I am unaware at this time.

5 Q Okay. Did it come --

6 JUDGE GOLDMAN: Anyway, I mean --

7 MR. BOREANAZ: Okay.

8 JUDGE GOLDMAN: This is what -- the witness says this is  
9 what he provided to the appellate body.

10 MR. BOREANAZ: Yeah.

11 JUDGE GOLDMAN: Yeah.

12 Q BY MR. BOREANAZ: So this GC-12 is what you sent to the  
13 international union LINUA in Washington, D.C., correct?

14 A This is the GC-12?

15 Q Yes.

16 A Yes.

17 Q Does it contain all the records you sent to the  
18 International --

19 A Yes.

20 Q -- to perfect your appeal of the local union disciplining  
21 you?

22 A Yes. Every document that I received was included as an  
23 exhibit, yes.

24 MR. BOREANAZ: All right. No objection.

25 JUDGE GOLDMAN: GC-12 is received.

1 (General Counsel Exhibit Number 12 Received into Evidence)

2 DIRECT EXAMINATION (CONTINUED)

3 Q BY MR. DURYEA: So is it your understanding that when you  
4 appealed the verdict that it lifted the six-month suspension?

5 A Yes.

6 Q And has there been any ruling on your appeal?

7 A No, not yet.

8 Q And once you appeal until when is the verdict? Until when  
9 is the suspension lifted once you appeal?

10 A I'm sorry. Can you ask -- can you say that again?

11 Q Once you appeal and as you -- you testified that once you  
12 appeal your understanding is the suspension is lifted?

13 A Yes.

14 Q Until when it is it lifted?

15 A Until the actual appeal date. I'm sorry. Until after the  
16 appeal -- the trial appeal board from the International renders  
17 a decision.

18 Q So let me shift gears here. Let me ask you who at the  
19 local maintains the out-of-work list?

20 A Mario Neri.

21 Q And who is Mario Neri?

22 A Retired laborer who works for Local 91 maintaining the  
23 out-of-work list.

24 Q And how do members of the local get to see the out-of-work  
25 list?

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1 A You have to come into the front office and approach the  
2 glass and ask to see the list.

3 Q And prior to about July of this year, how often was that  
4 list updated?

5 MR. BOREANAZ: I'm sorry. I didn't hear the question.

6 Q BY MR. DURYEA: Yeah, prior to about July of this year,  
7 how often was the list updated?

8 A The list was updated daily.

9 Q Since you were last referred by the local on November  
10 2015, about how often would you go to the union hall and  
11 physically look at the out-of-work list?

12 A It would vary from week to week, but I would say at least  
13 twice a week or I might phone the Union and ask them where I  
14 was on the out-of-work list.

15 Q Well, how many times approximately would -- on average  
16 would you actually go to the hall itself, not call?

17 A I would go to the hall at least a couple times a week.

18 Q And during this period when you went in to look at the  
19 list, how did you know how recently the list had been updated?

20 A By the dates on the list and you'd see if members were  
21 removed from the list from the day before.

22 Q Are you saying that the list had a date on it?

23 A Yes.

24 Q And you were able to see the date and the date reflected  
25 to the --

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1 MR. BOREANAZ: Object to the leading.

2 Q BY MR. DURYEYEA: You were able to see the date?

3 A Yes.

4 Q Okay. And what was your understanding of what that date  
5 meant?

6 A That was the date that the list -- for that date that was  
7 the list for that day, but if nobody went to work that day they  
8 might just kind of use the same list the next day. There's no  
9 reason to update it because nobody moved off of the list.

10 Q So let me draw your attention to June 26th of this year.  
11 Did you go to the union hall that day?

12 A Yes, I did.

13 Q What did you go there to do?

14 A I went to view the out-of-work list.

15 Q Who did you speak to there?

16 A Mario Neri.

17 Q Was anyone else present when you spoke to Mr. Neri?

18 A Diane might have been in the office at the time.

19 Q Who is Diane?

20 A She works in the office also with Mario, the front office.

21 Q Did Diane participate in the conversation?

22 A No.

23 Q About how long did you speak to Mr. Neri?

24 A Just a few minutes.

25 Q So tell me what happened in the conversation with Mr.

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1 Neri.

2 A I asked to view the out-of-work list and he said that he  
3 was updating it but he could let me look at the list that he  
4 had and as he was showing me -- handing me the list he said  
5 that they sent out two guys as stewards.

6 Q Did he tell you who they had sent out?

7 A Yes.

8 Q Who did he tell you they had sent out?

9 A James Spottedelk (phonetic) and Carl Walker.

10 Q Do you know if Mr. Spottedelk and Mr. Walker were higher  
11 or lower than you on the out-of-work list?

12 A Both of them are lower than me.

13 Q How do you know that?

14 A By viewing the list.

15 MR. DURYEA: Let the record reflect that I am showing  
16 opposing counsel and the witness a document that's been marked  
17 for identification as General Counsel Exhibit 13.

18 Q BY MR. DURYEA: Do you recognize this document?

19 A Yes, I do.

20 Q And what is it?

21 A This is a copy of the out-of-work list that Mario gave me.

22 Q When did he give it to you?

23 A April, I'm sorry, the 26th.

24 Q Of June?

25 A June, yes.

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1 Q The conversation we were just talking about?

2 A Yes.

3 Q Is that your handwriting on the document?

4 A Yes.

5 Q When did you handwrite those notes at the bottom?

6 A When I got home from -- when I seen that Spottedelk was  
7 sent out and Mario told me that he was sent out to Thomas  
8 Johnson I decided to go down to the job site myself, put my  
9 hard hat on, safety glasses and walked down to the job and  
10 spoke to an employee for Thomas Johnson for which Thomas  
11 Johnson was on the job for months already on the job.

12 MR. BOREANAZ: I'm going to object to what the Thomas  
13 Johnson employee claims or this witness claims that the Thomas  
14 Johnson witness said. It's complete hearsay. It's obviously  
15 being used for its own purpose.

16 JUDGE GOLDMAN: Well, let me -- let me start earlier, but  
17 the question as I remember is when did you write this  
18 information?

19 THE WITNESS: I wrote this information after I left the  
20 job site and went home.

21 JUDGE GOLDMAN: Okay.

22 THE WITNESS: What I had learned, that's when I wrote this  
23 down, when I went home after I left the Thomas Johnson job  
24 site.

25 JUDGE GOLDMAN: Okay.

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1 THE WITNESS: I got in my truck, drove home, went to my  
2 desk and wrote down the information that I had just learned on  
3 that job.

4 JUDGE GOLDMAN: Okay. And when did you go to the job  
5 site?

6 THE WITNESS: The same day that Mario Neri told me that  
7 James Spottedelk was referred to work for Thomas Johnson. I  
8 left the hall and drove right to the job site.

9 JUDGE GOLDMAN: Okay. And -- okay, now let's pick it up.  
10 Well, it's your question. Do you want to ask him what happened  
11 there?

12 Q BY MR. DURYEA: Well, let me ask this. So after you went  
13 to the job site and learned what you learned you -- I'm sorry.  
14 You've already said that you made these notes after that  
15 investigation.

16 A Correct.

17 MR. DURYEA: So I offer into evidence the document that's  
18 been marked as General Counsel Exhibit 13.

19 JUDGE GOLDMAN: Any objection?

20 MR. BOREANAZ: One second, please.

21 **VOIR DIRE EXAMINATION**

22 Q BY MR. BOREANAZ: Your testimony is that you wrote the  
23 handwritten information on the bottom of GC-13 on the same date  
24 June 26th, 2017, correct?

25 A Yes.

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1 Q Do you know what time of day you wrote this information,  
2 this handwritten information of yours?

3 A Early afternoon, after lunch.

4 MR. BOREANAZ: Well, I object to the contents at the  
5 bottom as being offered for the truth of the matter. I  
6 understand that --

7 JUDGE GOLDMAN: What is it offered for? I mean, this  
8 really is hearsay, isn't it?

9 MR. DURYEA: Well, this is being offered primarily for it  
10 reflecting where -- the relative positions of Ron Mantell, Mr.  
11 Spottedelk and Mr. Walker on the out-of-work list that day.

12 JUDGE GOLDMAN: Okay. And that's what was handed -- this  
13 was what was handed to you by Mr. Neri?

14 THE WITNESS: Yes.

15 JUDGE GOLDMAN: Okay. And who made the marks next to  
16 James Spottedelk and Carl Walker?

17 THE WITNESS: I did because those were the names that he  
18 told me were sent out so right away I put a dash next to them.

19 JUDGE GOLDMAN: Okay. Yeah, I mean, I agree this is sort  
20 of an account of --

21 MR. BOREANAZ: Can we make it --

22 JUDGE GOLDMAN: -- what he learned. You can redact it or  
23 we could -- I mean, I'm capable of ignoring it too. We can  
24 offer it without -- it's not being offered for the -- want to  
25 offer it without the --

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1 MR. DURYEA: I can admit it the handwriting at the bottom.

2 JUDGE GOLDMAN: -- writing on the bottom?

3 MR. BOREANAZ: Without it offer -- I have no objection.

4 JUDGE GOLDMAN: All right. So this document, GC-13, is  
5 being received but not for the --

6 MR. BOREANAZ: Handwritten information.

7 JUDGE GOLDMAN: -- handwritten information beginning  
8 with -- what about Thomas Johnson, Inc.? When did you write  
9 that?

10 THE WITNESS: I wrote that once he told me that that's who  
11 Spottedelk got sent out for, I wrote -- I mean, sorry -- right  
12 away I wrote Thomas Johnson underneath his name so I wouldn't  
13 forget the contractor that Mario said that --

14 JUDGE GOLDMAN: And then you went over there.

15 THE WITNESS: And then I went right to the job site.

16 JUDGE GOLDMAN: Okay. All right. So I'm going to receive  
17 it but not for everything that starts after the word was --  
18 that note that he wrote when he got home. Okay. So it's  
19 received on that basis.

20 **(General Counsel Exhibit Number 13 Received into Evidence)**

21 Q BY MR. DURYEA: So after this when was the next time you  
22 went back to the union hall?

23 A The next day.

24 Q So that would have been June 27th?

25 A June 27th, yes.

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1 Q Of this year?

2 A Yes.

3 Q And why did you go there that day?

4 A To review the out-of-work list again.

5 Q Was there any other reason you went there that day?

6 A I also wanted to see if I could get a copy of the building  
7 contract and utility contracts.

8 Q And who did you speak to at this visit of the union hall?

9 A Mario Neri in the hallway. He wasn't behind the glass.  
10 When I walked in the door he was coming across and I kind of  
11 caught him right there.

12 Q And was anyone else present when you were speaking to him  
13 there?

14 A No.

15 Q How long did you speak together?

16 A Just a couple minutes.

17 Q So what happened in that -- what happened in that  
18 conversation with Mr. Neri?

19 A I approached Mr. Neri and said that I would like to see  
20 the out-of-work list today.

21 Q And what did he respond?

22 A He responded and said that I wasn't allowed, that Richard  
23 Palladino told him that I'm not allowed to view the out-of-work  
24 list.

25 Q Did he tell you why you weren't allowed to see the out-of-

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1 work list?

2 A Because of what happened yesterday, the following day.

3 Q The previous day.

4 A The previous day, sorry, yes.

5 Q And what did you understand him to mean by "what happened  
6 yesterday"?

7 A My policing activity by me going to the job and asking  
8 questions and stuff of that nature.

9 JUDGE GOLDMAN: But that's just -- that's what you  
10 assumed?

11 THE WITNESS: Yes.

12 Q BY MR. DURYEA: So did you respond to what -- when Mr.  
13 Neri told you you couldn't see the list, what was your  
14 response, if any?

15 A I responded that I spoke to Mr. Sabatoni in 2015 about the  
16 same issue that I wasn't allowed to view the list and he put a  
17 call into Richard on my behalf at that time and I was allowed  
18 to view the list again after that. And I explained that to  
19 Mario that Mr. Sabatoni -- I've already been here before and  
20 Mr. Sabatoni let me see the list and he said that he's just  
21 doing what he's told or what Richard told I'm not allowed to  
22 see the list.

23 Q And you said you also went in that day to get -- see some  
24 copies of some contracts?

25 A Yes.

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1 Q Okay. Did you see those that day?

2 A No, I was not allowed to get the contracts neither.

3 Q Who didn't allow you to get them?

4 A Mario.

5 Q Okay. And did he say why?

6 A He said that if I wanted to see the list or the contracts  
7 that I had -- I think he said to contact the Department of  
8 Labor.

9 Q So how often does the Union post an updated out-of-work  
10 list now?

11 A Once a week.

12 Q How do you know that?

13 A When I was not allowed to view the out-of-work list I went  
14 home and called Chris Sabatoni again to explain that I wasn't  
15 allowed to view the out-of-work list again and he said that he  
16 would put a call into --

17 MR. BOREANAZ: I'm going to object to what he said.

18 JUDGE GOLDMAN: I'm going to allow it. I recognize  
19 there's a hearsay quality to it but it may explain actions  
20 taken. This isn't how you're going to prove the weekly nature?

21 MR. DURYEA: Yes.

22 JUDGE GOLDMAN: Well, isn't that a problem if it's relying  
23 on Sabatoni, what Sabatoni told him?

24 MR. DURYEA: Admission of a party opponent, Your Honor.

25 JUDGE GOLDMAN: I thought Sabatoni wasn't a party?

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1 MR. DURYEA: He's with the International.

2 JUDGE GOLDMAN: Right, but they're not a Respondent.

3 Didn't we go through this with the first conversation?

4 MR. DURYEA: Yes, Your Honor.

5 JUDGE GOLDMAN: Okay. That won't work. I mean, they're  
6 not alleged -- he's not alleged as an agent, is he?

7 MR. DURYEA: That's correct. He's not alleged as an  
8 agent.

9 JUDGE GOLDMAN: Different -- International is a different  
10 entity.

11 MR. DURYEA: Yes, that's correct that International is --

12 JUDGE GOLDMAN: I mean, he could act as an agent for the  
13 local but you don't -- that doesn't seem to be part of your  
14 argument.

15 MR. DURYEA: I'll move on from the questioning.

16 JUDGE GOLDMAN: I've got a question though. You asked  
17 whether they changed the posting. Do they post it at all? The  
18 question you asked was about posting. Is it posted, the out-  
19 of-work list?

20 THE WITNESS: The list is supposed to be posted on the  
21 bulletin board for every member to go on and see, but Dick --  
22 Richard operates it as if you have to go in and ask to see the  
23 out-of-work list and then they will who it to you.

24 MR. BOREANAZ: I'm going to object to that. It's not --

25 JUDGE GOLDMAN: Well --

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1 MR. BOREANAZ: -- responsive to the question as to it  
2 being something to --

3 JUDGE GOLDMAN: Well, it was responsive to my question.

4 MR. BOREANAZ: Well --

5 JUDGE GOLDMAN: I noticed something because -- so when you  
6 went in -- you talked about going in twice a week.

7 THE WITNESS: Yes, on average.

8 JUDGE GOLDMAN: My question was in those times was the --  
9 was it ever the case that the out-of-work list was posted  
10 meaning without consulting with -- without someone bringing it  
11 to you you could look at it on a wall or posted somewhere?

12 THE WITNESS: Never.

13 JUDGE GOLDMAN: Okay. All right.

14 Q BY MR. DURYEA: So other than a conversation with Mr.  
15 Sabatoni, how is it that you know that the local is only  
16 updating the list weekly now?

17 A When I come in to see the list it's posted behind a glass  
18 and the dates do not change on the list, only once a week.

19 Q And as far as you know, when did this change happen from  
20 updating it daily to updating it weekly?

21 A The change I would say took place maybe a week, less than  
22 a week after my policing activity.

23 Q The policing activity you're referring to what?

24 A Going down to the job site and checking to see about  
25 Spottedelk being on the job.

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1 Q So as a member of the local who is using the hiring hall,  
2 what difference does it make to you whether the list is updated  
3 daily versus updated weekly?

4 A If it's updated daily I can police it better as far as  
5 seeing who disappears off the list rather if they -- now if  
6 they're only updating the list once a week I can't view the  
7 list and see who comes off of the list during the week. I  
8 would not know everybody's names that are coming off the list  
9 so it makes it hard for me to police the list.

10 MR. DURYEA: No further questions at this point, Your  
11 Honor.

12 JUDGE GOLDMAN: Your witness. Why don't we take a break  
13 for lunch, come back, do your cross?

14 MR. BOREANAZ: What time would you like to come back?

15 JUDGE GOLDMAN: Unless you want to do it now. I don't  
16 know.

17 MR. BOREANAZ: I'd like a lunch break.

18 JUDGE GOLDMAN: Come back at 12:00, let's see, 12:00 --  
19 1:45.

20 MR. BOREANAZ: Fine.

21 JUDGE GOLDMAN: We stand in recess until then.

22 (Off the record at 12:34 p.m.)

23 JUDGE GOLDMAN: On the record. We are ready for cross-  
24 examination, Your witness.

25 MR. DURYEA: Your Honor, I might do something preliminary

1 to the cross-examination.

2 JUDGE GOLDMAN: Sure.

3 MR. DURYEA: We have a stipulation of two documents.

4 Respondent stipulated to the authenticity of two documents that  
5 I'd like to introduce into evidence.

6 JUDGE GOLDMAN: Okay.

7 MR. DURYEA: These are marked as General Counsel's Exhibit  
8 14 and General Counsel's Exhibit 15.

9 JUDGE GOLDMAN: Okay. And these are?

10 MR. BOREANEZ: These are minutes of the -- General Counsel  
11 14 is minutes of the October 15 membership meeting. And GC-15  
12 is minutes of the November 15 membership meeting.

13 JUDGE GOLDMAN: Okay. I just -- I'm sorry, the first one  
14 is October --

15 MR. BOREANEZ: October 15.

16 JUDGE GOLDMAN: Okay. And then November --

17 MR. BOREANEZ: Are you looking for a specific date?  
18 November 5th, 2015, and October 8th, 2015.

19 JUDGE GOLDMAN: Okay. Monthly meetings?

20 MR. BOREANEZ: Yeah.

21 JUDGE GOLDMAN: All right. So those are -- they're  
22 stipulated to be admissible.

23 MR. BOREANEZ: Yes.

24 JUDGE GOLDMAN: Into the -- okay. I received 14 and 15.

25 **(General Counsel Exhibit Number 14 and 15 Received into**

1 Evidence)

2 JUDGE GOLDMAN: Okay dokey. Your witness.

3 CROSS-EXAMINATION

4 Q BY MR. BOREANEZ: Mr. Mantell, can you tell me what you  
5 did to prepare yourself to testify here today?

6 A I -- in my mind, and I came here a few times.

7 Q Okay. So what did you do in your mind to prepare yourself  
8 to testify?

9 A Just try to go over, in my mind, everything that has  
10 happened over the past two years.

11 Q All right. So you made a concerted effort to try to think  
12 about the events to which you're testifying about, correct?

13 A Would you explain concerted effort?

14 Q Okay. Do you know what concerted effort is?

15 A No. I'm not --

16 Q Or do you know what concerted activity is? You know what  
17 concerted activity is?

18 A No. I'm waiting for you to explain to it to me.

19 Q Okay. I'm asking a question. You mentioned the term  
20 policing activity, right? Where did you learn that term?

21 A I learned it by myself.

22 Q Okay. How did you learn it by yourself?

23 A It just came out of my mouth.

24 Q Okay.

25 A And that's what I believe I was doing at the time.

- 1 Q All right. So you said you prepared your mind to testify.
- 2 And you also came here a few times, you mean at the NLRB?
- 3 A Yes.
- 4 Q And you met with personnel here at the NLRB to prepare
- 5 your testimony?
- 6 A Yes.
- 7 Q All right. And when did you do that?
- 8 A I don't know the exact dates. I came here on Wednesdays a
- 9 few times I don't have the exact date.
- 10 Q How many times did you do it? How many times did you come
- 11 here to prepare?
- 12 A Four times.
- 13 Q Would you consider that a few times?
- 14 A Yeah.
- 15 Q Okay.
- 16 A Yes, I do.
- 17 Q Over what period of time did you come here four times to
- 18 prepare your testimony?
- 19 A I came here over a period of last month.
- 20 Q So all in the month of October, or some in September?
- 21 A Some in September.
- 22 Q Okay. And you said you came here on Wednesdays, right?
- 23 A Yes.
- 24 Q All four times on Wednesdays?
- 25 A Yes.

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1 Q Why did you come here on Wednesdays?

2 A Because --

3 MR. DURYEA: Relevance, Your Honor?

4 MR. BOREANEZ: I just like a little leeway here, just --  
5 preliminary questions.

6 JUDGE GOLDMAN: To what?

7 MR. BOREANEZ: Testing the witness's memory. And it's  
8 accuracy of testimony, Your Honor.

9 JUDGE GOLDMAN: I know, but you need to do that based on  
10 the facts. Not on the -- it's not going to be a generalized  
11 memory. It's to remember when, where, or why he was here.  
12 That's not going to be when, where, or why he chose Wednesdays.

13 MR. BOREANEZ: We don't know the answer to the questions,  
14 so we don't know whether or not it's relevant or not.

15 JUDGE GOLDMAN: I'm going to sustain it.

16 Q BY MR. BOREANEZ: Mr. Mantell, how long was your  
17 preparation on the first occasion that you came here to prepare  
18 your testimony?

19 MR. DURYEA: Relevance, Your Honor.

20 JUDGE GOLDMAN: I'll allow it.

21 THE WITNESS: Approximately, an hour and a half.

22 Q BY MR. BOREANEZ: Okay. And second time?

23 A About the same.

24 Q It would be the same for the other two occasions? About  
25 an hour and a half each?

1 A Yes.

2 Q Okay. So you spent about six hours preparing for your  
3 testimony? Is that accurate? Over the course of four meetings  
4 with the board, here at this location?

5 A Give or take, yes.

6 Q Okay. During that period of time, did you review records  
7 and documents?

8 A Yes, I did.

9 Q Do you remember what records and documents you reviewed?

10 A Yes, I do.

11 Q And tell me which documents?

12 A Documents that were brought forward --

13 Q I'm sorry?

14 A Documents that were brought forward.

15 Q Okay. So the documents that were brought forward. When  
16 you say "brought forward", what do you mean by "brought  
17 forward"?

18 A The documents that were -- I had received by certified  
19 mail or in the regular mail.

20 Q From who?

21 A From -- I received documents from the International Union,  
22 I received documents from the Local 91 Union.

23 Q Okay. So when I asked you what documents you reviewed,  
24 you said the documents that were brought forward. And so,  
25 you're describing the documents that were brought forward as

1 the documents being records that you received from the Union by  
2 certified mail, correct?

3 A Yes. And --

4 Q And -- I'll ask the question. And records that you sent  
5 the International Union, correct?

6 A Yes.

7 Q What other documents did you review in preparation for  
8 your testimony?

9 A My documents that were attached to my appeal.

10 Q Those were documents that you sent to the International  
11 Union, correct?

12 A Yes.

13 Q Okay. What else?

14 A Other documents that were pertaining to the case.

15 Q Okay. Can you describe those other documents that you  
16 reviewed in preparation for your testimony during the  
17 approximately six hours you sent with the board?

18 A There was a lot of different documents, it's hard for me  
19 to explain every single one.

20 Q I'm not asking you to explain every single one, given you  
21 hoops of documents by identifying where they came from, okay?  
22 And now you're saying other documents, can you give us a better  
23 description of those other documents that you reviewed in  
24 preparation for your testimony?

25 A I just, like I said, just documents that I -- all the

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1 documents that I've had that pertain to this case.

2 Q Okay. I'm trying to understand what those documents are.

3 Okay? So I understand that you have told me that once. Can

4 you give me a better description of the documents, other than

5 "documents used in this case"?

6 A The documents that I received from the hall, from the

7 recording secretary Hasley, and most of the documents that were

8 presented in this case.

9 Q Okay. Do you know what documents were presented here?

10 A Yes.

11 Q Okay.

12 MR. BOREANEZ: Can we show the witness General Counsel's

13 exhibits, please? Does he have one? He doesn't have one?

14 MR. DURYEA: Oh, no. He does not have one.

15 Q BY MR. BOREANEZ: So you have General Counsel's Exhibit 2

16 through 15. Would you take a look at those, please? Let me

17 know when you're done.

18 A These are the documents that pertain to the case.

19 Q Let me ask you a question, having looked at General

20 Counsel's Exhibit 2 through 15, are those the documents that

21 reviewed in preparation for your testimony here today?

22 A Yes. Except for document 12, which is my appeal to the

23 international.

24 Q Okay. Any other documents, other than 2 through 15 with

25 the exception of GC-12, did you review in preparation for your

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1 testimony here today?

2 A No, I do not.

3 Q Now, you testified about conversations you claim occurred  
4 between you and Mario Neri, correct?

5 A Yes.

6 Q And you testified about conversation you claim you had  
7 with Richard Palladino, true?

8 A Yes.

9 Q Did you record any of these conversations?

10 A No, I did not. It is illegal to record --

11 JUDGE GOLDMAN: Just answer his question.

12 THE WITNESS: No.

13 Q BY MR. BOREANEZ: Did you record any of your conversations  
14 at the union hall --

15 A No, I did not.

16 Q -- with any representative of the trial board that brought  
17 and ruled on your charges?

18 A No.

19 Q Now, you testified that you had come into the hall  
20 approximately two times a week, correct?

21 A Yes, that's correct.

22 Q And when you were on vacation out of the area for a month,  
23 did you -- you didn't come to the hall during that period of  
24 time, correct?

25 A That's correct, not at that time.

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1 Q Isn't it fair to say you regularly took a vacation?

2 A Yes.

3 Q Okay. An extended vacation, more than a week, right?

4 A Yes.

5 Q Did you have a place out of town that you frequent  
6 regularly?

7 A Yes, I have a place out of town.

8 Q Okay. And during that this twice-a-week visit, had you  
9 occasion to see the referral hall rules?

10 A No.

11 Q You don't know where they are?

12 A I've never seen them posted.

13 Q Okay.

14 A Unless they were just recently posted.

15 JUDGE GOLDMAN: But you didn't see them?

16 THE WITNESS: Never.

17 Q BY MR. BOREANEZ: Okay. Now, at the union hall, there is  
18 a building, right?

19 A Yes.

20 Q And in the building, when you walk in the door that's in  
21 the middle of the building, you reach an office area that has  
22 glass windows that slide back and forth, right?

23 A Yes.

24 Q And it's got a shelf of some kind where there's literature  
25 and stuff like that that you pick up, true?

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1 A Most of the literature is on the bulletin board.

2 Q Okay. So out of the times, twice a week you came into the  
3 hall, there's nothing on the shelf that's immediately  
4 underneath the glass the doors that open and close to the union  
5 hall, correct?

6 A There could be papers there, but I've never seen anything.

7 Q Okay.

8 A As far as --

9 Q I'm trying to find out what you recall from what you know  
10 about your experiences going to the union hall twice a week,  
11 for years, right?

12 A Not for years, just from the part of the time where I was  
13 not receiving any work from the Union.

14 Q Okay. So --

15 A Before that everything was fine.

16 Q Okay. So you went to the union hall twice a week,  
17 starting what month and what year?

18 A After December of -- it would -- December of 2015. Except  
19 for the month -- the time that I was out of town.

20 Q Okay.

21 A Also, phone calls were made also.

22 Q I'm just talking about the visits now --

23 A Okay.

24 Q -- okay? So after December 2015 -- it was December you  
25 went into hall in December -- December 2015 twice a week?

- 1 A Yes.
- 2 Q Okay. And you took a vacation when in January, February
- 3 or both?
- 4 A Late February.
- 5 Q Okay. For how long?
- 6 A Four weeks.
- 7 Q Okay. That's your normal pattern, right?
- 8 A It depends.
- 9 Q Okay. So you took a four-week trip in late February 2016,
- 10 right?
- 11 A Yes.
- 12 Q And your testimony is that from December 2015 to the
- 13 present, you've been in the hall twice a week, right?
- 14 A Yes.
- 15 Q Every week?
- 16 A Except for when I was out of town.
- 17 Q Right?
- 18 A I can't --
- 19 Q Okay.
- 20 A -- get to the hall when I'm out of town.
- 21 Q Okay.
- 22 A But other than that for those other months, yes.
- 23 Q And is it your testimony that during those maybe a hundred
- 24 or so trips to the hall -- more than a hundred trips, right?
- 25 A I don't know, I'm not adding the trips up, sir.

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1 Q Okay. Well --

2 A I was there a lot of times.

3 Q -- you go twice a week, there's 52 weeks in a year.

4 You're only in town 48 of those weeks, and you say you've been  
5 doing this now for almost two years, right?

6 A Yes, approximately, yes.

7 Q So you've been to the hall over a hundred times since  
8 December 2015 with respect to going to the hall and going to  
9 where the offices where the glass windows are, correct?

10 A Yes.

11 Q All right. And during that period of time, your testimony  
12 is you've never seen the hiring hall rules, true?

13 A Correct.

14 Q All right. Is it your testimony that there, during that  
15 period of time, that you've been there, hundred or so times  
16 from December 2015 to the present that the hiring hall rules  
17 have never been posted, as you told the Administrative Law  
18 Judge?

19 A I have never witnessed them.

20 Q That wasn't my question. My question was, can you testify  
21 that the hiring hall rules, as you told Administrative Law  
22 Judge, were never --

23 JUDGE GOLDMAN: Yeah. That part is argumentative. Just--  
24 you can ask him, but --

25 Q BY MR. BOREANEZ: Do you recall telling the Administrative

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1 Law Judge that the hiring halls --

2 JUDGE GOLDMAN: That's sustained. Just ask him the  
3 questions. He doesn't have to recall particular bits of his  
4 testimony. I'm not willing to do that.

5 MR. BOREANEZ: Why is that not relevant?

6 JUDGE GOLDMAN: What he recalls telling me?

7 MR. BOREANEZ: What he recalls testifying to about an hour  
8 ago?

9 JUDGE GOLDMAN: It's not relevant. Just ask him the  
10 questions.

11 MR. BOREANEZ: Okay.

12 JUDGE GOLDMAN: All right?

13 MR. BOREANEZ: And then I'll point out on the record that  
14 it's just what he told --

15 JUDGE GOLDMAN: Right. If it's inconsistent --

16 MR. BOREANEZ: -- me --

17 JUDGE GOLDMAN: Right. That's legitimate, but that's  
18 argument.

19 Q BY MR. BOREANEZ: Mr. Mantell, is it your testimony that  
20 the hiring hall rules have never been posted in the union hall?

21 A Not that I have seen.

22 Q Okay. But you don't know if they're there or not, you  
23 just haven't seen them, correct?

24 A Yes.

25 Q That is correct, true?

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- 1 A Yes.
- 2 Q Now, had you ever had the occasion to look at or review
- 3 the hiring hall rules?
- 4 A No.
- 5 Q Okay. Have you ever asked to receive a copy of the hiring
- 6 hall rules?
- 7 A No.
- 8 Q Okay.
- 9 A Because I --
- 10 Q You can let your lawyer ask you more questions to explain
- 11 why you didn't ask for the hiring hall rules.
- 12 A Okay.
- 13 JUDGE GOLDMAN: Just answer his questions.
- 14 Q BY MR. BOREANEZ: Now, have you ever visited the
- 15 international union member site?
- 16 A The international union website?
- 17 Q Yes.
- 18 A No, I have not.
- 19 Q Okay. But you called the international union and talked
- 20 to who when you called there?
- 21 A Chris Sabatoni.
- 22 Q How did you get Chris's telephone number?
- 23 A I Googled International Laborer's Union of North America
- 24 and the phone number came up.
- 25 Q Okay. Chris's phone number came up?

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1 A No. Laborer's International Union came up.

2 Q And you called and got directed to Chris, is that how it  
3 happened?

4 A That's who -- that's who put on -- that's who they put on  
5 the phone with me to speak with.

6 Q Okay.

7 A But I did not specifically ask for him.

8 JUDGE GOLDMAN: Did you call him before you called --

9 THE WITNESS: No, I never met the man, no.

10 MR. BOREANEZ: You want Respondent's 1 or you want a  
11 letter?

12 JUDGE GOLDMAN: Yeah, R is fine, R-1 is fine.

13 **(Respondent Exhibit Number 1 Marked for Identification)**

14 Q BY MR. BOREANEZ: Let me hand you what's been marked as  
15 Respondent's Exhibit 1. Let me know when you're done taking a  
16 look at that.

17 A I have a question about this document.

18 Q Are you done reviewing it?

19 JUDGE GOLDMAN: Have you seen any of these documents?

20 THE WITNESS: That's what I wanted to say. Is this the  
21 document you say you posted --

22 JUDGE GOLDMAN: He's not --

23 THE WITNESS: Can I ask --

24 JUDGE GOLDMAN: Hasn't really said that in here. I think  
25 you have to start with whenever you've seen this.

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1 Q BY MR. BOREANEZ: Are you done reviewing the documents?

2 Let me know when you're done reviewing the document.

3 A Okay.

4 Q Now, have you heard the name Robert Luskin or the GEB  
5 attorney in connection with Laborer's Local 91 before?

6 A No.

7 Q Okay. Now, outside in the hall is Robert Connolly,  
8 correct?

9 A Yes.

10 Q And do you know how Robert Connolly became a business  
11 manager of Local 91?

12 MR. DURYEA: Object to relevance, Your Honor.

13 JUDGE GOLDMAN: What is the relevance?

14 MR. BOREANEZ: I have to explain relevance in cross-  
15 examination from the main witness?

16 MR. DURYEA: Outside the scope of the direct.

17 JUDGE GOLDMAN: Pretty sure, I mean, is it -- yeah, I'd  
18 like to know what the relevance -- I mean, maybe you can  
19 generally --

20 MR. BOREANEZ: All right. I'll explain the relevance if  
21 the witness steps out.

22 JUDGE GOLDMAN: Yeah, that's fine. Would you step  
23 outside?

24 MR. BOREANEZ: You're going to hear me argue that Mr.

25 Connolly is a biased witness, and he was actually put into the

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1 local union at behest of Laborer's International Union when  
2 they took over Local 91. And Rob Connolly was the one who was  
3 running the office after the arrests, and in the civil repo  
4 charges. He's alleging he doesn't remember who Robert Luskin  
5 is --

6 JUDGE GOLDMAN: The witness?

7 MR. BOREANEZ: The witness just said that. And so my  
8 questions relate to whether or not he really remembers that or  
9 not.

10 JUDGE GOLDMAN: Let's see how this witness can testify to  
11 events about whether or not Mr. Connolly is a biased witness.

12 MR. BOREANEZ: I'm not suggesting he can testify about  
13 that. I'm going to make that argument. He wouldn't talk to me  
14 out in the hall.

15 MR. DURYEA: He's not even been a witness, yet.

16 MR. BOREANEZ: He said he was going --

17 JUDGE GOLDMAN: He may be --

18 MR. BOREANEZ: When I asked him --

19 JUDGE GOLDMAN: -- we don't know.

20 MR. BOREANEZ: When I asked him why I was here he said  
21 we'll have to wait.

22 JUDGE GOLDMAN: Well, yeah. I don't think you can -- it  
23 is beyond the scope of direct to the extent you're trying to  
24 lay a foundation of bias or witness who hasn't appeared or been  
25 mentioned. And in terms of -- it's too far field to try to

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1 witness's testified that he's not heard the name Luskin.

2 You're going to have to tie -- if you want to question that,  
3 you're going to have to do it in a more direct way than his  
4 association.

5 MR. DURYEA: You can ask --

6 JUDGE GOLDMAN: So that would be sustained.

7 Q BY MR. BOREANEZ: You said you were a member for 27 years,  
8 correct? You testified to that earlier this morning.

9 A Yes, sir.

10 Q Do you have some knowledge of the history of Local 91?

11 A I'd say so, yes.

12 Q All right. And do you recall when some of your union  
13 officers were arrested and charged with federal crimes?

14 A Yes.

15 Q Okay. Were they all arrested from being -- they were in  
16 office when they got arrested, right?

17 A Not everybody.

18 Q Okay.

19 MR. DURYEA: Outside the scope of direct, Your Honor.

20 JUDGE GOLDMAN: Yeah, I --

21 MR. BOREANEZ: It is outside the scope of the direct  
22 testimony. He testified that he's a 27-year member of the  
23 union with knowledge about the union and is relying upon those  
24 27 years to provide testimony about the customs and practices  
25 of the union that he is now alleging are changed as a result of

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1 his brother's Facebook post.

2 And so, I'm asking questions about his knowledge of the  
3 union and as it relates to the protected speech of his brother  
4 in the Facebook posts, which are absolutely directly brought in  
5 line by virtue of the complaint specifically referenced, and  
6 specifically brought in and relied upon, the theory of the  
7 board is flat-out crystal clear that the Respondent engaged in  
8 inappropriate conduct as a result of this Charging Party's  
9 brother's protected speech.

10 JUDGE GOLDMAN: But, first of all, the brother's protected  
11 speech, that case is over.

12 MR. BOREANEZ: It certainly is over, Your Honor.

13 JUDGE GOLDMAN: Yeah, and --

14 MR. BOREANEZ: And let me draw your attention to the  
15 complaint.

16 JUDGE GOLDMAN: The question here is, the motive for the  
17 Respondent's actions in relation to this Charging Party. And,  
18 you know, we are not going to -- it is far field and collateral  
19 to attempt to question the witness on his knowledge of the  
20 criminal and civil actions against the Local in years gone past  
21 to ask about his knowledge of the particular rules that are at  
22 issue in this case, like, the out-of-work list and things, but  
23 I'm not going to allow it. It's just -- it's way a field. And  
24 it is beyond the scope of direct, you know.

25 MR. BOREANEZ: Well, I'm not restricted to the scope of

1 direct.

2 JUDGE GOLDMAN: Sure you are. Why not?

3 MR. BOREANEZ: I can't -- I'll wait to call him back as my  
4 own witness then.

5 JUDGE GOLDMAN: Well, okay. But then I'm not going to  
6 allow him to testify for the other reasons I have stated on  
7 those issues. I mean, I agree with you, I don't want to play  
8 games with the --

9 MR. BOREANEZ: Can I -- can I just state something --

10 JUDGE GOLDMAN: Sure.

11 MR. BOREANEZ: -- to have you --

12 JUDGE GOLDMAN: Absolutely.

13 MR. BOREANEZ: -- understand the reason behind this?

14 JUDGE GOLDMAN: I mean, I think I do, but you go ahead.

15 MR. BOREANEZ: So there's two main charges, one dealing  
16 with the lack of referral and the other dealing with the  
17 changing, the alleged changing of the practice regarding how  
18 the referral list is viewed by members, okay? Those are the  
19 two charges. Each one of them, both charges, it is alleged by  
20 the board that the motivation behind the respondent engaging in  
21 that conduct was because the brother engaged in protected  
22 activity. Straight from the complaint, crystal clear, that's  
23 the allegation. Okay?

24 So the nature of the allegations, the protected speech, is  
25 relevant as to whether or not it was a proper OR legitimate or

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1 appropriate or factual motive for my client engaging in this  
2 protected -- engaging in this claimed misconduct.

3 They alleged that the brother's protected activity was the  
4 motivating factor in my client's alleged wrongdoing. That's  
5 the theory of their case, it's right here in the complaint.

6 JUDGE GOLDMAN: Right. It is the theory of the case.

7 MR. DURYEA: That theory of the case encompasses Frank  
8 Mantell's protected activity as to the failure to refer. The  
9 changing of the practice of the updating of the referral list  
10 and the denial of Ron Mantell's decision to see out-of-work  
11 list. That's related to Ron Mantell's protected activity, not  
12 Frank Mantell's protected activity.

13 JUDGE GOLDMAN: Well, either way, it's partially related  
14 to the activity. But I will still not -- okay. It's the --  
15 their argument is that they didn't refer him in retaliation for  
16 the brother's protected activity --

17 MR. BOREANEZ: Right.

18 JUDGE GOLDMAN: -- right? That's what you're saying?

19 MR. BOREANEZ: That's how it's alleged.

20 JUDGE GOLDMAN: Right. But -- so where does that leave  
21 us? The question is the motive of the respondent. It's not  
22 the witness's knowledge of years or the history of the Local.  
23 I don't -- we are not going to relitigate whether --

24 JUDGE GOLDMAN: I'm not relitigating --

25 MR. BOREANEZ: -- the brothers --

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1 JUDGE GOLDMAN: -- protected speech or not. That's not --

2 MR. BOREANEZ: Right, right.

3 JUDGE GOLDMAN: It's completely done with.

4 MR. BOREANEZ: This conduct by witness's brother, Frank, I  
5 guess, that is what it is. It's been -- we have a Board order,  
6 we can get it. Parts of it are --

7 MR. BOREANEZ: Don't mistake -- I'm not trying to --

8 JUDGE GOLDMAN: -- protected, that happened. I just -- I  
9 don't see the relevance --

10 MR. BOREANEZ: I'll move on --

11 JUDGE GOLDMAN: -- to what you're doing.

12 I'm going to sustain it.

13 Q BY MR. BOREANEZ: Mr. Mantell, do you recognize any  
14 portion of Respondent's Exhibit Number 1?

15 A Re-ask the question, please.

16 Q Mr. Mantell, do you recognize any portion of Respondent's  
17 Exhibit Number 1?

18 A No.

19 Q So let me draw your attention to the fifth page of  
20 Respondent's Exhibit Number 1 where, on the top of the page, it  
21 says Local Union Number 91 LIUNA amended job referral rules.  
22 And then this the successive pages after that. Pay particular  
23 attention to those pages in Respondent's Exhibit 1, okay?

24 Is it your testimony that you've never seen the Local 91  
25 LIUNA amended job referral rules as reflected in pages five

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1 through the end of Respondents Exhibit Number 1?

2 A No.

3 Q It's not your testimony? I'll ask a different question.

4 JUDGE GOLDMAN: I think that's disingenuous --

5 MR. BOREANEZ: I'll ask a different question.

6 JUDGE GOLDMAN: -- given the question and the answer.

7 Q BY MR. BOREANEZ: Have you ever seen pages five through  
8 the end of Respondent's Exhibit Number 1 before today?

9 A These five pages?

10 Q Yes.

11 A Possibly years ago, but not recently.

12 Q Okay. When you say years ago, what do you mean by that?

13 A I might have seen years ago.

14 Q I'm not asking what you might have done. I'm trying to  
15 find out what you actually did do and what you actually can  
16 recall. So can you tell me if you do, in fact, recall seeing  
17 these job referral rules reflected in a portion of Respondent's  
18 Exhibit 1 before today?

19 A No.

20 Q Okay. Now, is it -- where do you -- where does your  
21 understanding of the referral hall procedures come from? Where  
22 did you learn about the referral hall procedures?

23 A My knowledge.

24 Q Your experience, right?

25 A Yes.

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- 1 Q Through your own personal experience, true?
- 2 A Yes.
- 3 Q And through talking with other members?
- 4 A Yes. That's --
- 5 Q Any other place that you have learned about the hiring
- 6 hall procedures through your own experience and through talking
- 7 with other members? Any other source of information that you
- 8 draw from, in order to describe the Local 91 hiring hall
- 9 procedures?
- 10 A No.
- 11 Q Did you, in fact, know that the Local 91 had written
- 12 hiring hall procedures, were you aware of that fact?
- 13 A I believe there's rules --
- 14 Q Okay.
- 15 A -- about the list, yes.
- 16 Q Okay. And how did you come to the understanding that
- 17 there were written rules regarding the hiring hall referral
- 18 procedures?
- 19 A It might have been mentioned at past union meetings, maybe
- 20 once I've heard before, I know there is rules for the list.
- 21 Q Okay. Now, as a member, are you not responsible to know
- 22 the rules of your union?
- 23 A Rules pertaining to member?
- 24 Q As a member of Local 91, are you not, according to your
- 25 constitution, required to know the rules of your union?

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1 A Not required.

2 Q Okay. Do you have a duty to know and understand the rules  
3 and procedures of your union and to follow them?

4 A Explain rules.

5 Q You don't understand the question?

6 A I do, but you're not -- you're just saying -- you're not  
7 going into what kind of rules. The union has a lot of rules  
8 that we have to abide by.

9 Q Okay. What is your understanding of the rules that you  
10 have to abide by as a union member of Local 91?

11 A That we have -- I have to abide by the contract that I  
12 work for -- that I work under.

13 Q Okay. What other rules do you have to, as a member of  
14 Local 91, follow?

15 A I'm not really sure, just basic rules. I've never held  
16 office. I'm not an e-board member. I don't know all of the  
17 rules, I'm just a worker.

18 Q When you complained to the board that you were not being  
19 referred out by the referral hall, is it fair to say you didn't  
20 have an understanding of these written job referral rules?

21 A No.

22 Q So when you complained to the board about not being  
23 referred out, you did, in fact, have an understanding of these  
24 job referral rules that are reflected in Respondent's Exhibit  
25 1?

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1 JUDGE GOLDMAN: Well, he's never -- he hasn't testified to  
2 seeing this. I mean, if you want to stipulate these are the  
3 rules. That would -- I don't know if that would, you know, I'm  
4 guessing they are, but we don't know.

5 MR. DURYEA: Yeah, we don't know.

6 JUDGE GOLDMAN: Oh, you don't know.

7 MR. DURYEA: No.

8 JUDGE GOLDMAN: Oh.

9 Q BY MR. BOREANEZ: All right. So based upon your knowledge  
10 of the rules, from your own personal experience and from  
11 talking to members, are you aware that the rules provide that  
12 the steward is to be the first person sent out to a job?

13 A Yes.

14 Q That is a rule that you are familiar with, correct?

15 A Yes.

16 Q And do you know if there is any preference given to any  
17 member on the referral list, as far as a member being sent out  
18 of the hall not in their numeric order?

19 A Yes.

20 Q What preferences do you understand, not from the written  
21 rules, but from your own experience and from talking to other  
22 members, are you familiar with that people can go off the list,  
23 refer you off the list not in their numeric order?

24 A Yes.

25 Q What are those preferences, that you're familiar with?

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1 A If -- if a man is requested by a contractor or if Richard  
2 Palladino places a member as a steward.

3 Q What else that you're familiar with, or is that it?

4 JUDGE GOLDMAN: What -- I'm sorry. What's the difference,  
5 isn't it question -- I mean, what does it matter, he might be  
6 right or wrong about the rules. But that doesn't really change  
7 your situation, does it?

8 MR. BOREANEZ: I think it does.

9 JUDGE GOLDMAN: How? I mean, the question is --

10 MR. BOREANEZ: He's alleged --

11 JUDGE GOLDMAN: -- you're going to put a witness on and  
12 say this is why we did what we did.

13 MR. BOREANEZ: I will.

14 JUDGE GOLDMAN: I think.

15 MR. BOREANEZ: Right.

16 JUDGE GOLDMAN: Yeah. And whether he's right or wrong  
17 about the rules, I don't understand how that --

18 MR. BOREANEZ: Okay. You're not interested in that at  
19 this point then I won't pursue it.

20 JUDGE GOLDMAN: Yeah, I mean, I guess that's why -- I  
21 don't know if I want to buy into a lack of interest, but I  
22 just-- it's, you know, the test every --

23 MR. BOREANEZ: I think it's evident, based upon the fact,  
24 and it's in the record that he's got limited knowledge of the  
25 written rules and procedures.

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1 JUDGE GOLDMAN: I understand.

2 MR. BOREANEZ: I'll move on.

3 JUDGE GOLDMAN: I understand. He hasn't seen them, or  
4 he's not sure he's seen them.

5 Q BY MR. BOREANEZ: You testified that your understanding of  
6 the rules is that Richard Palladino appoints a steward,  
7 correct?

8 A Yes.

9 Q Okay. Is it more accurate to say that the business  
10 manager who's elected by the management elects the steward?  
11 Isn't that the rule?

12 A Same statement I just told you.

13 Q Okay.

14 A Business manager makes the steward.

15 Q Okay. And that's something that you are very familiar,  
16 with as far as rules and procedures and Local 91, correct?

17 A Yes.

18 Q Because that's in the constitution, right? Your union  
19 constitution?

20 A It's in the building.

21 Q It's in the contract, right?

22 A Yeah.

23 Q When you say the contract, you're referring to General  
24 Counsel 4 in front of you, right?

25 A Yes, this agreement, yes.

1 Q Now, you testified that you had received a notice from the  
2 union about internal union charges brought against you,  
3 correct?

4 A Yes.

5 Q That's reflected in General Counsel 6 in front of you,  
6 true?

7 A Yes.

8 Q Now, those charges are in fact written, right?

9 A Yes.

10 Q And were the charges from that were proffered against you,  
11 were they signed by that person?

12 A Which document are you talking about?

13 Q Okay. Well, General Counsel 6 and General Counsel 7, do  
14 you see that? 6 is the letter from --

15 A Yes, I see that.

16 Q -- recording secretary --

17 A Yes.

18 Q -- Hasley, telling you that charges have been brought  
19 against you by Richard Palladino, correct?

20 A Yes.

21 Q And General Counsel's 7 is the charges Richard Palladino  
22 brought against you, correct?

23 A Yes.

24 Q All right. And so those charges by Richard Palladino are  
25 written and signed by Palladino, correct?

- 1 A Yes.
- 2 Q And they indicate the provisions of the constitution
- 3 relied upon, do you see that?
- 4 A Paragraphs A and B --
- 5 Q Yes.
- 6 A -- on the front?
- 7 Q Yes.
- 8 A Yes.
- 9 Q Now, what is your understanding of the constitution? Do
- 10 you know what that is?
- 11 A Yes. According to these two paragraphs, A and B.
- 12 Q Do you know what the Union's constitution is?
- 13 A Yes.
- 14 Q All right. What is it?
- 15 A It's the constitution that laborers abide by.
- 16 Q Okay. Now, was these charges brought against you, as
- 17 reflected in General Counsel 7, brought and filed within 30
- 18 days of the conduct that is reflected in the charge?
- 19 A Yes.
- 20 Q You already testified you got the charges in the mail,
- 21 right?
- 22 A Yes.
- 23 Q And do you know if the trial board that heard these
- 24 charges, were they executive board members of the local union?
- 25 A Yes.

- 1 Q And were each one of those elected, those members of the  
2 executive board, elected by the members?
- 3 A You're asking elected --
- 4 Q Aren't the executive board members elected by members?
- 5 A Yes.
- 6 Q Okay. Now, when you were out of town -- you said you were  
7 out of town, right? When the charges first got sent to your  
8 house?
- 9 A Yes.
- 10 Q You said you were out of town from February 24th to March  
11 25th, 2017, right?
- 12 A Correct.
- 13 Q Did you notify the hall that you were out of town? That  
14 you weren't available for referral?
- 15 A No, I did not.
- 16 Q Okay. So you got sent the notice for a hearing, right?
- 17 A Yes.
- 18 Q When you were out of town?
- 19 A Yes.
- 20 Q Okay. And when you got back into town, you called the  
21 hall, right?
- 22 A No.
- 23 Q You didn't call the hall?
- 24 A No, I went to the post office and received my mail.
- 25 Q Okay. You got your mail and you saw that you had been

1 charged and a hearing had been set while you were out of town,  
2 you called the hall; is that right?

3 A No. I spoke to Kevin Hasley, I called actually.

4 Q Okay. So you called Kevin?

5 A Yes.

6 Q He's the one who sent you the letter --

7 A Yes.

8 Q -- right? And you told him you were out of town, right?

9 A Yes.

10 Q And you asked for a new date, right?

11 A He -- he asked me what -- if the 8th would be fine.

12 Q Okay.

13 A So --

14 Q So he offered a new date?

15 A Yes.

16 Q Now, this trial board, was it conducted in an orderly  
17 manner? Let me ask you a different question. Did Palladino  
18 make any presentations against you at the hearing?

19 A Yes.

20 Q And did you ask Palladino questions during the hearing?

21 A Yes, I believe I did.

22 Q Okay. And after Palladino made a presentation, did you  
23 then make a presentation to the trial board?

24 A Yes.

25 Q And, in fact, one of the things you presented was a

1 statement that you read at the hearing, General Counsel's 10,  
2 correct?

3 A Yes.

4 Q Now, during the trial board, did any of the trial board  
5 members ask you questions?

6 A Yes.

7 Q More than one trial board member ask you questions?

8 A Yes.

9 Q Did you answer the questions?

10 A Yes, I did.

11 Q Now, did you tell the trial board that all contractors  
12 should have a steward?

13 A Yes, I did.

14 Q Did you tell the trial board that you thought, "I was  
15 doing the hall a favor by taking the work from the concrete  
16 finishers"?

17 A Yes, I did.

18 MR. BOREANEZ: Am I allowed to elaborate that on that,  
19 Your Honor?

20 JUDGE GOLDMAN: Counsel -- your counselor will pick it up  
21 on--

22 THE WITNESS: Okay.

23 Q BY MR. BOREANEZ: Did one of the trial board members state  
24 that individual laborers have a responsibility to notify that  
25 there was no steward on the job? Do you remember Brother

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1 Stencil (phonetic) saying that to you at the trial board?

2 A Yes.

3 Q Do you know how long the trial board hearing was? How  
4 long it took to conduct the trial board hearing?

5 A Maybe an hour, hour and a half, couple hours. I don't  
6 know the exact time.

7 Q You testified that the trial board hearing ended and the  
8 trial board went away to deliberate, or that wasn't your words  
9 exactly. They left -- they left, they came back, right? And  
10 gave you a decision --

11 A Yes.

12 Q -- right? And do you recall how long they were gone in  
13 deliberation?

14 A Maybe 10 minutes; 10, 15 at the most, maybe. I wasn't  
15 timing it.

16 Q And they gave you a verbal decision, correct --

17 A Yes.

18 Q -- that's your testimony?

19 A Yes.

20 Q And then you received a written decision in the mail,  
21 correct?

22 A Yes.

23 Q Now, let -- take a look at General Counsel's 10. Will you  
24 look at that please? Now, it states here that hearing finding  
25 decisions -- do you see that on the last page of General

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1 Counsels 10 -- or General Counsel's -- 10, yeah.

2 JUDGE GOLDMAN: Can you direct us a little more closely.

3 MR. BOREANEZ: Maybe I'm wrong. Do I have this wrong?

4 THE WITNESS: I think you have the wrong document.

5 MR. BOREANEZ: I do have this wrong. What do you have as

6 10?

7 JUDGE GOLDMAN: 10's the statement, his statement.

8 MR. BOREANEZ: Okay. I have 11.

9 JUDGE GOLDMAN: Maybe you mean 9?

10 MR. BOREANEZ: No, 10 -- what's 11?

11 MR. DURYEA: 11 is the letter to Kevin Hasley.

12 JUDGE GOLDMAN: The violation.

13 MR. BOREANEZ: Number 9.

14 MR. DURYEA: Number 9. Attendance of hearing.

15 JUDGE GOLDMAN: Mm-hm, yes.

16 Q BY MR. BOREANEZ: Look at the third page of number 9,  
17 General Counsel's 9. Hearing finding decisions. You see that?

18 A Yes, the back page, yes.

19 Q Okay. It sates, quote, after much consideration and  
20 thought, the executive board did not believe that brother  
21 Mantell's explanation of his transgressions were justified.  
22 That being said, a vote was cast, present jury called out the  
23 hearing board names and votes were cast as follows.

24 Do you see that?

25 A Yes.

1 Q Now, based upon the questions that were asked of you by  
2 trial board members, people that you've worked with, right?

3 A Yes.

4 Q Did you get the impression they didn't believe you?

5 A No.

6 Q Now, after getting the decision of the trial board in  
7 writing, General Counsel's 11, right?

8 A Now we're back to 11 now.

9 Q Right. That's the letter decision?

10 A Yes.

11 Q You timely filed an appeal to the International Union,  
12 correct?

13 A Yes, I did.

14 Q And the penalty imposed upon you on the trial board of a  
15 six-month membership suspension and a \$500 fine was suspended,  
16 right?

17 A Yes, \$500 fine and six-month suspension.

18 Q Your penalty was put on ice, stayed, it was stopped as a  
19 result of you filing your appeal, correct?

20 A Yes, when I filed my appeal, yes.

21 Q Okay. You're not required to pay your \$500 fine, right?

22 A No.

23 Q And you haven't served any part of your six-month  
24 suspension as a result of you filing your appeal with the  
25 International Union, correct?

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1 A Yes.

2 Q Now, after received receiving the April 8th letter of  
3 decision, General Counsel's 11, when was the next monthly  
4 meeting that occurred?

5 A It would have been the second Monday of May. I don't know  
6 the exact date.

7 Q Okay.

8 A Monthly meetings are the second Tuesday of the month.

9 Q And according to the Union rules that you're familiar  
10 with, after somebody gets found to have violated some rules by  
11 the trial board, what's the next step in the process?

12 A Appealing it.

13 Q All right. Now, did your discipline by the trial board,  
14 did that get brought up at membership meeting in May of 2017?

15 A Yes.

16 Q Were you there?

17 A Yes.

18 Q Okay. And was it a regularly held membership meeting in  
19 May of 2017?

20 A A regular monthly membership meeting?

21 Q Yes.

22 A Yes.

23 Q Okay. And was the trial board's findings brought to the  
24 membership in May of 2017 at the membership meeting?

25 A Yes.

Mantell - Cross - Boreanaz

1 Q And did a member, John Panatonie, bring a motion to /  
2 sustain the trial board findings against you?

3 A Yes, he did, by a show of hands.

4 Q And did Todd McDermott second that motion?

5 A Yes.

6 Q And then was a vote taken on the floor regarding that  
7 motion to sustain the trial board decision --

8 A Yes.

9 Q -- to discipline you?

10 A Yes. With no explanation, yes.

11 Q Now, you testified this morning regarding the October 2015  
12 membership meeting where the subject of one part of that  
13 meeting was your Brother Frank, right?

14 JUDGE GOLDMAN: You didn't hear that?

15 THE WITNESS: I heard that, but -- the meeting that you  
16 described --

17 MR. BOREANAZ: I'll ask you a different question.

18 THE WITNESS: -- was a long time ago.

19 MR. BOREANAZ: I'll ask you a different question.

20 THE WITNESS: You said it was November of 2015 -- or  
21 October of 2015. I don't remember if I really was at that  
22 meeting or not. I thought -- I was going to them and then once  
23 I was brought up on charges I stopped attending the meetings  
24 because I just didn't want to get harassed or -- so I stopped  
25 attending the meetings.

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1 Q BY MR. BOREANAZ: Okay. Well, in October of 2015 you  
2 didn't have any charges pending against you, did you?

3 A At that time, no.

4 Q Okay. So if you didn't attend October 2015 membership  
5 meeting it wasn't because you had charges pending against you,  
6 right?

7 A No. Like I said, it's been two years since that meeting.  
8 So I really don't remember if I was present. At first, I  
9 thought I was there. But I'm just -- I'm not sure if I was  
10 present at that meeting. I don't remember.

11 Q All right. What meeting are you referring to?

12 A The meeting that you just discussed.

13 JUDGE GOLDMAN: October. I think it was triggered by you.  
14 You had mentioned October 2015. He's saying he's not --

15 MR. BOREANAZ: Right.

16 JUDGE GOLDMAN: -- sure.

17 THE WITNESS: To be honest with you, I believe that I  
18 might not have been at that meeting.

19 Q BY MR. BOREANAZ: Okay. Now, do you recall when your  
20 brother filed NLRB charges -- strike that. Do you recall when  
21 your brother made Facebook posts?

22 A No, I'm not on Facebook, sir.

23 Q All right. Do you recall ever learning that your brother  
24 made Facebook posts that were critical of the local union  
25 giving Glen Chelopean (phonetic) a union book?

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1 A Yes, I did hear of it. Yes.

2 Q Okay. Do you remember that occurring in August of 2015?

3 A In August of 2015?

4 Q Right. Do you recall your brother making critical  
5 Facebook posts in August 2015 that the union had given Glen  
6 Chelokean a union book?

7 A I do. I'm not going to say that I heard it at that time,  
8 but I did hear about the Facebook posts. But I'm not exactly  
9 sure when I heard it.

10 Q Okay.

11 A It could've been August. It could've been September.

12 Q All right.

13 MR. BOREANAZ: Well, just for matter of record, the NLRB  
14 decision is in the record. Well, it's not in the record. It's  
15 available.

16 JUDGE GOLDMAN: It is.

17 MR. BOREANAZ: I'll make it a part of the record if Your  
18 Honor wants. But it clearly states that the Facebook posts  
19 were August of 2015.

20 JUDGE GOLDMAN: Is that something you can stipulate to?

21 MR. DURYEA: Yeah, we can stipulate to that.

22 Q BY MR. BOREANAZ: And do you recall Palladino had filed an  
23 internal union charge against Frank Mantell in early September  
24 for these Facebook posts?

25 A I was aware that he brought Frank -- my brother, up on

Mantell - Cross - Boreanaz

1 charges. But I wasn't aware of the timeframe when I heard it.

2 MR. BOREANAZ: Okay. Can we have a stipulation to that  
3 effect as well?

4 MR. DURYEA: What's that?

5 MR. BOREANAZ: Can we have a stipulation also that it was  
6 in early September that Palladino brought internal union  
7 charges against Frank Mantell for the Facebook post?

8 MR. DURYEA: I would actually have to look at the decision  
9 itself. It's reflected in the decision.

10 JUDGE GOLDMAN: Well, if it's a finding in the decision,  
11 you know, from my point of view, it happened.

12 Q BY MR. BOREANAZ: And do you recall, Mr. Mantell, that  
13 Frank Mantell had a trial board hearing on October 5th, 2015?  
14 And then a membership meeting on October 12th affirmed the  
15 trial board decision that Frank Mantell had violated the  
16 Constitution?

17 A Yes. I was aware that there was a trial set up. But I  
18 didn't know exactly the date it was going to be.

19 Q Okay. Now, how long have you been Frank Mantell's  
20 brother? I'll ask a better question. Were you Frank Mantell's  
21 brother in late August when he was making these Facebook posts?

22 A I believe so, yes.

23 Q And you've been his brother ever since, right?

24 A Yeah. Yes, sir.

25 Q Okay. So you testified that you were sent by the hall out

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1 on a job and the lost job you got was in November 2015, right?

2 A Yes. October -- late October into first or second week in  
3 November, yes.

4 Q Okay. Let me show you Respondent's Exhibit 2, and let me  
5 know when you're done looking at it.

6 A First of all, I can't really read this. Do you have a  
7 microscope or binoculars? My eyes are a little bit bad.

8 JUDGE GOLDMAN: Well --

9 MR. BOREANAZ: Let me know when you're done looking at it.

10 THE WITNESS: I'm looking at that.

11 JUDGE GOLDMAN: Okay. You can't read it?

12 Q BY MR. BOREANAZ: All right. That's fine. Now, do you  
13 recall -- one second. One minute. When your brother was in  
14 early August 2015, making Facebook posts that were critical of  
15 Palladino and the union giving out Glen Chelopean a union book,  
16 do you recall in that same period you getting referred out to  
17 Northland Construction? Do you recall that, Mr. Mantell?

18 A Yes, I do.

19 Q And at the time that Palladino filed internal union  
20 charges against your brother for the Facebook posts in early  
21 September 2015, and the time that he had his trial board in  
22 October, and then the union meeting October 12th, 2015, do you  
23 recall being referred out to Fox Fence and A1 Land Care by the  
24 union hall?

25 A Yes.

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1 Q You were still his brother then, right?

2 A Yes.

3 Q Do you remember being referred out to Pavilion Drainage as  
4 well during that same period of time?

5 A Yes.

6 Q And Yosari Construction -- Yarusi, I'm sorry. Do you  
7 recall being referred out to Yarusi in or around the fall of  
8 2015?

9 A Yes.

10 Q While your brother was engaged in this protected activity  
11 of making Facebook posts, right?

12 A I didn't know the exact date that my brother was making  
13 his Facebook posts on. I'm not a member on social media. I've  
14 never been.

15 Q Okay.

16 A I don't follow. So I don't know exact dates of what my  
17 brother was doing. He's his own person.

18 JUDGE GOLDMAN: But you remember work --

19 THE WITNESS: Yes.

20 JUDGE GOLDMAN: -- that counsel is referring to?

21 THE WITNESS: Yes.

22 Q BY MR. BOREANAZ: Now, you mentioned that one of the  
23 things that you are familiar with with respect to preferences  
24 for contractors to get members off the referral list, not in  
25 numeric order, you indicated if a contractor requests somebody

1 or if Palladino or the business manager puts a steward on,  
2 right?

3 A Yes.

4 Q Now, do you know if the contractor asked for somebody with  
5 a special skill? Not necessarily Contractor Jon Jones -- or  
6 employee Jon Jones, but a special skill. Would that, in your  
7 mind, be an appropriate referral from the hall not in numeric  
8 order?

9 A Depending on the skill.

10 Q Okay.

11 A If you'd like to elaborate on the skill.

12 Q All right. Well, you actually tell the union hall what  
13 your skills are, right?

14 A Yes.

15 Q Okay. And do you know what some of the categories of your  
16 skills are?

17 A Multiple skills.

18 Q Okay. And --

19 A If you'd like me to elaborate, I will.

20 Q Well, you've been working for 27 years, right?

21 A Yes.

22 Q Okay. And there are some members that have special skills  
23 based upon their work experience, right?

24 A Yes.

25 Q And some people have special skills based upon their

1 training, correct?

2 A Yes.

3 Q Okay. Now, what skills did you get -- strike that.

4 Laborers 91, the Union, does it have an affiliated training  
5 fund?

6 A Yes.

7 Q And is the training fund Local 91 training fund?

8 A Local 91 Education and Training Funds.

9 Q Okay. And how long has the education and training fund  
10 been in place?

11 A A long time.

12 Q And the training fund provides opportunities for members,  
13 does it not, to gain special skills, right? True?

14 A Yes.

15 Q And the training fund allows members to gain  
16 certifications, right?

17 A Yes.

18 Q And do you know what kind of certifications the training  
19 fund gives out?

20 A Yes. There's multiple classes.

21 Q Okay. Like dealing with hazardous material would be one,  
22 right?

23 A Yes.

24 Q Dealing with lead removal, right?

25 A Yes.

- 1 Q And asbestos, right?
- 2 A Yes.
- 3 Q Asbestos removal, right? You've heard of a safety  
4 certification OSHA training?
- 5 A Yes.
- 6 Q You've heard of all these things, right?
- 7 A Yes.
- 8 Q Now, what training had you done at Local 91 to better your  
9 certification or skill level in the last five years?
- 10 A In the last five years?
- 11 Q Yes.
- 12 A I believe my -- I want to say my OSHA 30 card. That's  
13 required by a lot of different contractors now. It started  
14 with maybe one or two and now it's escalated to more  
15 contractors requiring a OSHA -- I don't know if it's the OSHA  
16 30. But we took an OSHA 30 just to make sure that you know,  
17 the guys were qualified. The OSHA card, which I put out.
- 18 Q OSHA, O-S-H-A, right?
- 19 A Yes, sir.
- 20 Q Okay. And so in the last five years you took the OSHA 30  
21 card; got certification for OSHA 30, right?
- 22 A Yes.
- 23 Q And that qualifies you to go on certain jobsites, right?
- 24 A Yes.
- 25 Q And you just testified as of recent years, that's required

- 1 more and more on more jobs; is it not? Based upon your  
2 knowledge.
- 3 A The OSHA, yes.
- 4 Q The OSHA 30, right?
- 5 A Yes.
- 6 Q Okay. So in the last five years you've done OSHA training  
7 -- or training with OSHA 30, right? What else?
- 8 A That would be it.
- 9 Q Okay. Now, is this -- when you take the OSHA training,  
10 having gone through it in the last five years, does it last  
11 forever or do you have to renew it every once in a while?
- 12 A Some contractors will -- as long as you have it you're  
13 fine. It all depends on the contractor. Certain contractors  
14 have certain rules with the OSHA 30.
- 15 Q You know where I'm going with this, don't you?
- 16 A They might -- as long as you have taken it, some  
17 contractors are fine. Some contractors want it renewed five to  
18 seven years.
- 19 Q You let yours expire, didn't you?
- 20 A My OSHA 30?
- 21 Q Yeah.
- 22 A No, I did not.
- 23 Q Your OSHA 30's not expired?
- 24 A No.
- 25 Q Okay. So when's the last time you took it?

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- 1 A When's the last time I took it?
- 2 Q Uh-huh.
- 3 A I want to say I took a refresher on it -- sir, I don't
- 4 remember the exact dates. I mean, we're going back years here.
- 5 I can't remember exactly when I took the class. All I know is
- 6 that when I worked at the Ford plant I had the OSHA 30 and it
- 7 was accepted at the Ford plant last year with a drug card to
- 8 work at the Ford Motor Company.
- 9 Q Okay. Other than OSHA 30, do you have any other
- 10 certifications?
- 11 A I had the asbestos license for years.
- 12 Q Has that been expired?
- 13 A And I let the asbestos license go because I was not
- 14 referred to any asbestos work for over a 10 year period.
- 15 Q Or you don't like that kind of work?
- 16 A I never said that.
- 17 Q I'm asking; did you like that kind of work?
- 18 A It's work. I'm a laborer. We don't have the best jobs
- 19 out there in the construction industry -- the laborer. But we
- 20 do what we have to do, we're laborers.
- 21 Q You have your preferences though, don't you?
- 22 A No, I don't. Every job I go on is a job I go and do my
- 23 job on.
- 24 Q Okay.
- 25 A You take whatever the hall gives you and you go to work.

1 Q Okay. So is it your testimony you've never told the hall  
2 what jobs you don't want to be referred to or do want to be  
3 referred to?

4 A No, never.

5 Q You've never told the union hall that you don't want one  
6 day jobs?

7 A No.

8 Q You've never told the Union --

9 A Any laborer would not want a one day job.

10 Q Okay.

11 A But I never came in there and said, I don't want one day  
12 jobs.

13 Q Okay.

14 A I mean --

15 Q Did you ever tell the union hall that you don't want two  
16 day jobs?

17 A No.

18 Q Okay. Did you ever tell the union hall you don't like  
19 overtime?

20 A At one time I did.

21 Q Okay.

22 A Because I was having an issue with my leg at the time.  
23 But that was only for four weeks. I had a superficial blood  
24 clot in my leg. And I didn't want to be on my leg for extreme  
25 amounts of overtime until after the clot was dissolved.

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- 1 Q So what is your specialty skill?
- 2 A Specialty skill?
- 3 Q What is your specialty skill?
- 4 A I have lots.
- 5 Q What is your best specialty skill? Let me ask you this --
- 6 A I wouldn't say I'm --
- 7 Q Are you a good --
- 8 A -- the best. I'd say I'm a well-rounded laborer in all
- 9 aspects of construction.
- 10 Q Okay.
- 11 A I'm not going to say a specific skill,
- 12 Q Are you a good buster using the jackhammer?
- 13 A If need be, yes. Which I have done plenty of times.
- 14 Q And you never told the union hall that you don't want to
- 15 do a busting job?
- 16 A No, I've never told them that.
- 17 Q Isn't it true that you haven't attended a training class
- 18 at Local 91 in over four and a half years?
- 19 A Yes because I'm not an apprentice. I'm not required to
- 20 take the classes.
- 21 Q Okay.
- 22 A I'm a 27 year member that has learned in the field
- 23 construction.
- 24 Q Well, you do realize your industry has changed; do you
- 25 not?

1 A Slightly changing, yes.

2 Q Okay. Now, you testified that you were at the Hall on  
3 June 26th, 2017, correct?

4 A Yes.

5 Q You said you first had a conversation with Mario Neri,  
6 right?

7 A Yes.

8 Q And then you said you had a conversation with Richard  
9 Palladino, right?

10 A No, I did not say that.

11 Q You had a conversation with him the next day on the 27th?

12 A Yes, not on the 26th.

13 Q 27th?

14 A No, I never had a conversation with Mr. Palladino on the  
15 27th or the 26th.

16 Q Okay.

17 A The only person I spoke to on those two days was Mario  
18 Neri.

19 Q Now, you said that you'd come in twice a week to look at  
20 the out of work list for the last couple years, right?

21 A Yes.

22 Q And each time you came in, you were able to see it, right?  
23 Correct?

24 A Yes. But there was a time in 2015 when I was not  
25 permitted to see the list.

1 Q So when you came into the Hall, let's say in 2016, twice a  
2 week, you'd walk into the hall, you'd go to the counter where  
3 the sliding glass door is, and you'd ask to see the out of work  
4 list, right?

5 A Yes.

6 Q Okay. And where was it, generally speaking, when you  
7 would do that? Where was the out of work list?

8 A Behind the glass.

9 Q Okay.

10 A On the counter where I wouldn't be able to see it from  
11 looking at it. They would have to -- the actual sign in sheet  
12 is kept right there. So when a laborer is laid off, he can go  
13 in, put his name on the out of work sign in sheet right there.

14 Q Okay.

15 A If you'd want to see the list you'd have to ask for the  
16 actual out of work list.

17 Q All right. So let's just see if we can let the  
18 Administrative Law Judge have an understanding of the physical  
19 layout of that space since you'd been there so often. When you  
20 walk in to the vestibule, you turn to your right, correct?

21 A Yes.

22 Q And there's a wall about -- there's a glass window about  
23 twice the size of that white board, right?

24 A Yes.

25 Q And there's doors on that window that open and close --

1 glass doors, right?

2 A Yes.

3 Q All right. And there's a ledge shelf right around chest  
4 height, correct?

5 A Yes.

6 Q That you could lean on --

7 A Yes.

8 Q -- and talk through the glass window to the people in the  
9 other side of the glass window, right?

10 A Yes.

11 Q The other side of the glass window is three desks, right?

12 A I believe so, yes.

13 Q Who sits in the one?

14 A I think there's three desks. I know Mario's desk is in  
15 the back. And I think Diane's is to the right.

16 Q Okay. And Diane is who?

17 A She works in the front office of the union.

18 Q She's a union secretary?

19 A You could say that, yes.

20 Q Okay. And so on the other side, you've got the ledge  
21 where you can put your elbows on to talk through the window;  
22 you've got the window that slides back and forth, right?

23 A Yes.

24 Q That's on a track, right?

25 A Yes.

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1 Q And then on the other side of the window there's also

2 another ledge, right? Step down a little bit, right?

3 A I believe so, yes.

4 Q Okay. And on that ledge, it goes all the way across that

5 long wall, right?

6 A On the inside or the outside?

7 Q Both; on the inside and the outside.

8 A I'm not sure about the inside.

9 Q Okay.

10 A The outside I know it goes across.

11 Q And there's stuff on the inside ledge like stamp machines

12 and papers and --

13 A Stuff that I'm not --

14 Q -- stuff.

15 A -- paying attention to.

16 Q Right. And your testimony is is that in 2016, you would

17 come into the hall. You'd open -- or put your elbows on the

18 outside shelf, talk through the window and say, can I see the

19 out of work list; is that what happened?

20 A Yes.

21 Q Twice a week, right?

22 A One week it might have been twice. It could've been --

23 for two weeks it might've been two days. And then the third

24 week it could've been a day and then back to two. But on

25 average, two days.

1 Q Okay. And some days you didn't even have to ask because  
2 it would be in plain sight; is that not accurate?

3 A That's not accurate.

4 Q Okay. Some days it would be right on top of the desk on  
5 the other side of the glass window? Right on that same shelf?

6 A Over to the side so nobody could reach in and take it.  
7 They claimed that they keep it back there now because people  
8 were supposedly stealing the list.

9 Q Okay.

10 A So they said they kept it behind the glass.

11 Q And you don't believe them, do you?

12 A Excuse me?

13 Q You don't believe them when they tell you that people were  
14 taking the lists?

15 A I don't know what to believe, sir.

16 Q All right. So you have no idea whether people took the  
17 lists or didn't take the lists, right?

18 A I really don't know. All I know is the list was kept  
19 behind the glass and we'd have to ask for it.

20 Q Okay.

21 A Unless you're signing the out of work sign in sheet --  
22 that's not the list. It's the sign in sheet. That's available  
23 for the members to sign.

24 Q Because people are running in, signing, and leaving,  
25 right?

1 A Yes.

2 Q Okay.

3 A But the actual list is kept behind the glass and you have  
4 to ask.

5 Q And they told you it was kept behind the glass because  
6 people were stealing it?

7 A Yes.

8 Q Who told you that? Diane, the secretary, Mario? You  
9 don't remember?

10 A It could've been Mario. It was a long time ago. I don't  
11 remember. It was a long time ago.

12 JUDGE GOLDMAN: Don't do that.

13 Q BY MR. BOREANAZ: All right.

14 A Because it was to my knowledge the list was supposed to be  
15 kept on a bulletin board.

16 Q Okay. And your knowledge is based upon what?

17 A By when I called Chris Sabatoni and asked him that I  
18 wasn't allowed to see the list in 2015.

19 Q Okay.

20 A And then I had to call him again when I wasn't allowed to  
21 see the list again.

22 Q So based upon what somebody told you, right?

23 A Well, he didn't -- Chris did not tell me that that was the  
24 reason that the list wasn't posted on the bulletin board. He  
25 said that it should be posted on the bulletin board.

1 Q Okay.

2 A But it never has been and it still is not. Well, it's  
3 posted on the glass that you were speaking of. But it's never  
4 been posted on the bulletin board.

5 Q Okay. So your testimony is that the list -- the referral  
6 list, is no longer in the corner on the other side of the glass  
7 outside of plain view, and now it's posted on the glass, right?

8 A Yes.

9 Q Okay. So what's more accessible to you as a member;  
10 behind the glass where you have to ask to see it, or when it's  
11 posted straight up on the glass? What's more accessible to you  
12 as a member?

13 A More accessible to me?

14 Q Yes.

15 A If it's posted.

16 Q Okay. Posted on the bulletin board was what you wanted it  
17 to be, right?

18 A Yes.

19 Q Okay. On the glass is not appropriate as far as you're  
20 concerned, right?

21 A I never said it wasn't appropriate.

22 Q Okay, but --

23 A I said it needed to be posted. I didn't say on the  
24 bulletin board or the glass. I did not specify that.

25 Q Okay. Just to be clearer, the posting on the glass is

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1 faced out, so you don't have to ask anyone to see it, right?

2 A Now, yes. Now it is. Yes.

3 Q Okay. You don't have to bother anybody? If the  
4 secretaries on the phone, you don't have to wait for her. If  
5 Mario's in the restroom, you don't have to wait for him. Maybe  
6 Mario's on the phone with a contractor. You can walk in, look  
7 at it, walk out. Right?

8 A Now, yes.

9 Q Okay.

10 JUDGE GOLDMAN: When did that start?

11 THE WITNESS: That started after June 27th. After my  
12 policing activity that we spoke of earlier.

13 Q BY MR. BOREANAZ: And the policing activity that you're  
14 referring to -- this policing activity, and that's the activity  
15 that you claim that you went on a job site to see who was the  
16 steward on that job site, right?

17 A Correct.

18 Q Okay. And who did you run into on that job site?

19 A Names?

20 Q Yeah.

21 A Ronald Apalone (phonetic).

22 Q Okay.

23 A And Peter Mariell (phonetic).

24 Q All right. Have you talked to either one of them since?

25 A No. No reason to. I spoke to them that day and got what

1 I needed and I left the job.

2 Q Okay. It wasn't a fanfare of you being on the job, right?

3 You said you put your hard hat on, your safety glasses on, you  
4 went incognito onto the job, right?

5 A Yes.

6 Q Okay.

7 A Which I'm completely allowed to do.

8 Q No ruckus? You didn't get thrown off the job?

9 A No arguments, no ruckuses, nothing like that.

10 Q As far as you're concerned, the only people that knew you  
11 were on the job was Ron and Pete, right?

12 A Yes. Two laborers that I've known for years and worked  
13 with both of them.

14 Q Okay. So as far as you know, that's the only people who  
15 knew you were on the job?

16 A Those were the only two gentlemen that I spoke to.

17 Q As far as you know, they're the only people you knew that  
18 were on the -- that knew that you were on the job, correct?

19 A Yes. I was taking a second to think if anybody else came  
20 around when I spoke to them, but no. Just --

21 MR. BOREANAZ: Could I have a minute, please? Can we take  
22 a five minute break?

23 JUDGE GOLDMAN: Yeah. Yeah. Not a big -- I was going to  
24 wait until you finish, but if you --

25 (Off the record at 3:38 p.m.)

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1 Q BY MR. BOREANAZ: Mr. Mantell, you testified earlier today  
2 that the union hall changed the frequency in which out of work  
3 lists was refreshed as a result of this visit of yours to the  
4 job site where you talked to these two members, correct?

5 A Yes.

6 Q Ron Apalonie and Peter Murrell, true?

7 A Yes.

8 Q And you testified that your understanding that the Union  
9 Hall before your policing activity to go on this job on the  
10 frequency in which the out of work list is renewed, your  
11 understanding was that it was done every single day, correct?

12 A Yes, if the list changed it would be done every day. If  
13 members went off of the list.

14 Q And your understanding of -- your understanding that it  
15 was changed almost every day was based upon not your reading of  
16 their hiring hall rules, right? But based upon your own  
17 personal experience, right?

18 A Just knowing, yes, that the list is -- it was in  
19 existence.

20 Q Well --

21 A Even at our other building on Seneca Avenue, the list was  
22 updated daily.

23 Q Okay. And you talk about the other building that's on  
24 Seneca Street. You mean, when the Union was on Seneca Street,  
25 right?

1 A Yes.

2 Q Was that before or after all these arrests?

3 A Say that again?

4 Q How long has the Union been at its current location and  
5 not on Seneca Street?

6 A I want to say about maybe seven, eight years now.

7 Q Okay. So let's focus on the seven or eight years as  
8 opposed to 20 years ago, okay? In the last seven or eight  
9 years, your understand is that the union hall would update the  
10 out of work list almost on a daily basis? That's your  
11 understanding of the last seven and a half years, correct?

12 A Yes.

13 Q And that understanding you got based upon your own  
14 experience of maybe going to the hall, right?

15 A Going to the hall, asking to see the list. And sometime  
16 they might be -- they might have been actually updating the  
17 list for that day, yes.

18 Q Okay. Didn't you testify that before your brother's  
19 protected activity on Facebook, you never paid any attention to  
20 the list because everything was going fine? Didn't you testify  
21 to that?

22 A I never testified that I didn't pay attention to the list.

23 Q Okay. So you didn't visit twice a day before your  
24 brother's Facebook activity, right?

25 A Twice a day or twice a week?

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1 Q You didn't visit the union hall twice a week before your  
2 brother's Facebook activity, right?

3 A No. Maybe once a week or maybe a phone call.

4 Q Okay. So I'm trying to find out and you have you provide  
5 accurate testimony, what forms the basis of your opinion that  
6 the union hall for seven years; while it had been in this new  
7 building to the current time, was regenerating their out of  
8 work list almost on a daily basis? What forms the basis of  
9 your opinion in that regard?

10 A As far as the out of work list, you're saying?

11 JUDGE GOLDMAN: Being updated daily.

12 Q BY MR. BOREANAZ: That's what you testified to, right?

13 A Yes.

14 Q Okay. How do you know that?

15 A By being a laborer we just kind of know the basic rules of  
16 the list.

17 Q Okay.

18 A But as far as these are the rules --

19 Q So do you tell us that every single laborer knows just by  
20 virtue of the fact that they've got a union card, that the hall  
21 -- in your opinion, regenerates the out of work list on a daily  
22 basis?

23 A I'm not aware what other laborers think.

24 Q Okay. And so you didn't really talk -- you don't talk to  
25 other laborers about how frequent the out of work list is

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1 regenerated in the last two years, for example, right?

2 A No, it's not a topic that I bring up to other laborers.

3 No.

4 Q Okay.

5 MR. BOREANAZ: I have no further questions at this time.

6 JUDGE GOLDMAN: Any follow-up?

7 MR. DURYEA: Yes, briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 Q BY MR. DURYEA: Earlier you testified about a statement  
10 that you made, I believe it was at the trial board, that you  
11 believed you were doing a favor to the union by taking the work  
12 on the Scrufari job; did you testify to that?

13 A Yes.

14 Q Okay. Just -- I don't remember your testimony. You said  
15 at the time that you wanted to elaborate on that answer?

16 A Yes.

17 Q Do you want to elaborate on it now?

18 A Yes, I would like to.

19 Q Okay.

20 A At that point, I was desperate. I hadn't received any  
21 work at all out of the hall. I'm an old school laborer. I  
22 don't believe in taking another trade's work. But it was only  
23 for a six hour day. I was desperate and I needed some work. I  
24 wasn't receiving anything out of the hall at all. No  
25 referrals. Did I want to do another trade's work? No. I've

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1 got to put food on my table and feed my you know, my family. I  
2 have bills. At that time I was desperate for a job. And I  
3 even explained that to Rick Williamson who was the brick  
4 layer's business agent. And also, Chuck LeCurdle who was the  
5 business manager for the cement finishers that I was -- when I  
6 had spoke to them on the phone. And I apologized to them for  
7 taking their work for that day. And they accept my apology.  
8 But they were very upset with Richard Palladino for taking that  
9 work when it was awarded to the brick layers. And then it was  
10 taken away from the brick layers. And they were upset about  
11 that. They accepted my apology. I know Chuck LeCurdle. I  
12 worked with him over the years.

13 JUDGE GOLDMAN: All right.

14 MR. BOREANAZ: I'm not striking anything from the record,  
15 per se. I don't think that was responsive to the question, but  
16 I'll let it stand.

17 JUDGE GOLDMAN: I think it went beyond responsive. I'm  
18 not going to remove it.

19 THE WITNESS: Sorry. I just a little bit -- I just --

20 JUDGE GOLDMAN: It's okay.

21 Q BY MR. DURYEA: There was some testimony on cross-  
22 examination about whether or not you had some specialized  
23 skills?

24 A Yes.

25 Q Prior to November 2015 -- prior to the end of them

1 referring you out --

2 A Yes.

3 Q -- the union referring you out. Did you have specialized  
4 skills at that point prior to that date?

5 A No, just the OSHA 30.

6 Q But nevertheless you were still referred out with  
7 regularity?

8 A Oh, yes.

9 Q There was some testimony on cross examination about two  
10 gentlemen, Ron Apalonie and Pete Morriel that you spoke to at  
11 the job site on June 26th?

12 A Yes.

13 Q And what did you speak about with them?

14 A Like I said, I parked my vehicle and right near where the  
15 maximixer was -- which is a unit that they use to premix motor  
16 mix instead of mixing it in a wheel barrel or a cement mixer.  
17 Ronnie Apalonie was at the maximixer manning the maximixer when  
18 I approached him. And the first thing I did was shake his hand  
19 and say hello. He thought maybe I got sent to -- oh you know.  
20 He looked at me and goes, oh, you're here? And I was like,  
21 well, I'm here but I'm not here. I said you guys received a  
22 new employee today that James Spottedelk? And he said yes, yes  
23 he was here. And I asked him, I said, is he your steward? I  
24 said, you guys have already been here for how long? Is he your  
25 steward? And he looks at me, he goes --

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1 MR. BOREANAZ: I'm going to object to --

2 THE WITNESS: -- he said no --

3 MR. BOREANAZ: I'm going to object to what somebody else  
4 says as hearsay.

5 JUDGE GOLDMAN: It's hearsay. Is there any basis for it?

6 MR. DURYEA: Mr. Boreanaz got into this conversation on  
7 cross-examination. I think that I'm entitled to.

8 JUDGE GOLDMAN: I don't recall. I mean I --

9 MR. BOREANAZ: Can I respond?

10 JUDGE GOLDMAN: I thought he referenced it that these are  
11 the only two people that you -- that you know as far as you  
12 know, knew you were there. But that's different, isn't it? I  
13 mean, the conversation is -- isn't it hearsay?

14 MR. DURYEA: All right, Your Honor. I will --

15 JUDGE GOLDMAN: Is there any other --

16 MR. DURYEA: -- withdraw the question.

17 JUDGE GOLDMAN: -- reason for it? I'm going to sustain  
18 the objection.

19 MR. DURYEA: Okay.

20 JUDGE GOLDMAN: Unless you're telling me it's offered for  
21 something different.

22 MR. DURYEA: No. Truth of the matter.

23 JUDGE GOLDMAN: Okay.

24 MR. DURYEA: No further questions at this time, Your  
25 Honor.

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1 JUDGE GOLDMAN: All right.

2 MR. DURYEA: Oh, oh --

3 JUDGE GOLDMAN: Hold on.

4 MR. DURYEA: Almost.

5 JUDGE GOLDMAN: That happens.

6 MR. DURYEA: Actually, one more question.

7 JUDGE GOLDMAN: Just one more question?

8 MR. DURYEA: Well, maybe.

9 JUDGE GOLDMAN: That's what they all say.

10 Q BY MR. DURYEA: So at the trial board --

11 A Trial board with --

12 Q The trial board -- your hearing on the charges at work.

13 A From the Local Union or the phone conference?

14 Q No, no, no. When the Local Union --

15 A Yes.

16 Q -- had a trial --

17 A Okay.

18 Q -- on the charges that Richie Palladino brought against

19 you. First of all, Richard Palladino -- who brought the

20 charges against you?

21 A Richard Palladino.

22 Q And who made a presentation at the trial board against

23 you?

24 A A few different trial board members had comments; Mr.

25 Palladino and Paul Hoyt. A few guys had comments, yes.

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1 Q Did Mr. Palladino sort of spell out the case?

2 A Yes, he did.

3 MR. DURYEYEA: That's it for now, Your Honor.

4 JUDGE GOLDMAN: Okay.

5 MR. BOREANAZ: No questions.

6 JUDGE GOLDMAN: Okay. I have a -- you're excused.

7 THE WITNESS: Thank you. Excused to over there?

8 JUDGE GOLDMAN: Yes. Off the witness stand. Yeah, not  
9 from the room. But I do -- I have a question about your case.  
10 Are you contesting the validity, the trial -- the Local trial  
11 process and the result of the trial process? Or just the  
12 motivation for bringing the charge -- the local charge?

13 MR. DURYEYEA: The motivation and I would also perhaps  
14 venture the severity of the penalty given the infraction.

15 JUDGE GOLDMAN: So that would sort of -- that gets into  
16 the result.

17 MR. DURYEYEA: Right.

18 JUDGE GOLDMAN: The result is discriminatory, I guess --

19 MR. DURYEYEA: Right.

20 JUDGE GOLDMAN: -- would be the word. Well, let's say the  
21 -- just hypothetically, let's assume that the motivation for  
22 the bringing of the charge was bad. Motivated by this  
23 protected activity of his brother's. Let's assume that for a  
24 moment. If that's true, but it was a valid charge and the  
25 result is valid and the process was valid, still a violation?

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1 MR. DURYEA: If it was unlawfully motivated, yes.

2 JUDGE GOLDMAN: Okay.

3 MR. DURYEA: If it was motivated in order to squelch  
4 protected activity or retaliate against --

5 JUDGE GOLDMAN: Okay. So it's --

6 MR. DURYEA: -- because of protected activity.

7 JUDGE GOLDMAN: So you're saying that could be like the  
8 employer who finds out a guy's been violating -- terminates an  
9 employee for parking on the white lines in the parking lot?

10 MR. DURYEA: Yeah.

11 JUDGE GOLDMAN: If he really did it and it's really an  
12 offense, then you can get in trouble for it. But if you think  
13 his motivation was bad, that's a violation?

14 MR. DURYEA: Yeah. It's along those lines, Your Honor.

15 JUDGE GOLDMAN: All right. I'm just trying --

16 MR. BOREANAZ: Wouldn't it fall to reason that the remedy  
17 in a case like that would be to not bring a charge -- not bring  
18 an internal union charge? In your hypothetical, remedy would  
19 be -- would have to stop at that. Don't bring a charge.  
20 You're forbidden from being a charge like that which is  
21 intended to squelch protected activity.

22 JUDGE GOLDMAN: I don't know. I was just asking. I mean,  
23 I've seen -- it's a small part of the evidence. You're saying  
24 opposed to --

25 MR. BOREANAZ: That would be the remedy.

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- 1 JUDGE GOLDMAN: As opposed to?
- 2 MR. BOREANAZ: If the process is fair. If the process is
- 3 appropriate. If the process is a legitimate violation.
- 4 Then --
- 5 JUDGE GOLDMAN: Well, I don't know. I mean that's -- I
- 6 was just wondering the extent. You know, what or how -- I
- 7 mean, the complaint does seem to challenge the process a little
- 8 bit. I just didn't know.
- 9 MR. BOREANAZ: That's not really very clear to me in
- 10 trying to defend the case. You know. You asked a question.
- 11 Do you challenge the --
- 12 JUDGE GOLDMAN: No, no. But he gave --
- 13 MR. BOREANAZ: -- process?
- 14 JUDGE GOLDMAN: He said he challenges the penalty. The
- 15 severity of the penalty they're arguing.
- 16 MR. BOREANAZ: The penalty was motivated by --
- 17 JUDGE GOLDMAN: I think that -- I mean, I just asked.
- 18 MR. BOREANAZ: I didn't quite hear that the penalty -- the
- 19 penalty was severe because of a motivation to squelch protected
- 20 activity.
- 21 MR. DURYEA: Or retaliate against protected activity, yes.
- 22 MR. BOREANAZ: Oh, it was a retaliatory act? Okay.
- 23 JUDGE GOLDMAN: Yeah, I mean --
- 24 MR. BOREANAZ: Okay.
- 25 JUDGE GOLDMAN: -- it was just a question I had. Scope of

1 the theories.

2 Got another witness? It's 4:00. Should we keep going?

3 MR. DURYEA: General Counsel calls Robert Connolly.

4 JUDGE GOLDMAN: Proceed.

5 Whereupon,

6 ROBERT CONNOLLY

7 having been duly sworn, was called as a witness herein and was  
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 Q BY MR. DURYEA: Mr. Connolly, are you employed?

11 A No, retired.

12 Q How long have you been retired?

13 A Since '09.

14 Q 2009?

15 A Right.

16 Q Are you a union member?

17 A Yes.

18 Q And what union are you a member of?

19 A Laborers Local 91.

20 Q And how long have you been a member of Local 91?

21 A I'd say since -- 35 years now, yeah.

22 Q And you've retained your membership even though you've  
23 retired?

24 A Yes.

25 JUDGE GOLDMAN: If you'd keep your voice up.

1 THE WITNESS: Yes.

2 Q BY MR. DURYEA: You used to be the business manager of the  
3 local?

4 A Yes.

5 Q And when were you the business manager?

6 A 2002 to 2009.

7 Q Do you know Richard Palladino?

8 A Yes, I do.

9 Q And who is he?

10 A He's the new business manager.

11 Q And did Mr. Palladino become the business manager right  
12 after your term?

13 A Yeah, he ran against me in the election I got it.

14 Q Do you know Ron Mantell?

15 A Yes, I do.

16 Q And in your approximately seven years as the Local's  
17 business manager, did you ever refer Ron Mantell out off of the  
18 out of work list?

19 MR. BOREANAZ: I'm going to object to the relevance of  
20 another business manager's referral of this Charging Party  
21 eight years ago. What's the relevance to this charge?

22 JUDGE GOLDMAN: General counsel?

23 MR. DURYEA: Respondent is suggesting that Ron Mantell did  
24 a poor job and that's why he was not being referred out. And  
25 we're just trying to establish that previously he had no

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1 problems getting referred out for jobs.

2 MR. BOREANAZ: First off, we've got a whole big issue  
3 that's looming over this case about the time limit. When the  
4 charge was brought and how long they're going to be able to go  
5 back to bring activity that they claim is a violation of the  
6 act well, well beyond the six month period of time. Now we're  
7 getting into things that are eight, nine, ten years ago. I  
8 mean, he's a business manager from 2002 to 2009. Are we going  
9 to talk about what he did 12, 14 years ago? And what relevance  
10 it would have in a case like this?

11 JUDGE GOLDMAN: I mean, don't you have a -- in your view,  
12 don't you have a pattern of referral out more recent than that?  
13 This isn't something that had began in 2009. If it did, then  
14 you would have a --

15 MR. DURYEA: Right. Right. So --

16 JUDGE GOLDMAN: -- time bar problem.

17 MR. DURYEA: I mean, we introduced a document that spells  
18 out the number of hours that Ron Mantell worked out of  
19 referrals from the hiring halls in the exhibits.

20 JUDGE GOLDMAN: It seems to me this is a long way --  
21 ancient history from whether the suitability of Mr. Mantell --

22 MR. DURYEA: All right. That's all right, Your Honor. I  
23 can move on.

24 JUDGE GOLDMAN: I'm going to sustain that objection.

25 Q BY MR. DURYEA: Does the Local hold regular membership

1 meetings?

2 A Yes.

3 Q And how often do they hold those meetings?

4 A Once a month.

5 Q And when during the month?

6 A Second Monday.

7 Q And although you're retired, do you still go to these  
8 monthly meetings?

9 A Yes, I do.

10 Q Who attends the membership meetings?

11 A The working members usually. A few retirees.

12 Q And are there union officers there?

13 A Oh, yeah. Yeah. Most of the officers are required to be  
14 there.

15 Q So about how many members are usually in attendance on any  
16 given meeting?

17 A Forty, 50.

18 MR. BOREANAZ: Can we have a timeframe here, please.

19 Talking about 12 years ago? 15 years ago? What are we talking  
20 about?

21 JUDGE GOLDMAN: Do you continue to attend meetings in the  
22 last year?

23 THE WITNESS: Yeah. These are recent meetings. Yeah.

24 JUDGE GOLDMAN: Go ahead. Overruled.

25 Q BY MR. DURYEA: So as business manager, does Mr. Palladino

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1 regularly make a statement to the members during the monthly  
2 meetings?

3 A Yes, he does. That's part of the agenda of the meeting.

4 Q And what sort of things does Mr. Palladino typically cover  
5 in his regular statement to the members?

6 A Upcoming jobs, how jobs are going, any issues that have  
7 arisen in the Hall. That's it.

8 Q Let me draw your attention to the period from March  
9 through May of this year. Did you attend monthly membership  
10 meetings during that time?

11 A Yes, I did.

12 Q Did you attend in March?

13 A Yes.

14 Q Did you attend in April?

15 A Yes.

16 Q Did you attend in May?

17 A Yes.

18 Q So during the monthly meetings during this period, do you  
19 recall if Richard Palladino made any remarks to the members  
20 about Frank Mantell?

21 A Yes, he did.

22 Q What did he say?

23 A Well, he said it was the -- I think they just wrapped up  
24 the case or you know, one of the -- you know, there was a few  
25 things going on. He said you know, about Frank, you know that

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1 they won you know, the case against Frank. You know, at least  
2 part of the case which I can't remember what it -- oh, I think  
3 it had to do with his cell phone. He was recording things at  
4 the meeting. So then Dickie elaborated on that and says, you  
5 know, anyone going to the NLRB you know, has got another thing  
6 coming. You think you can get free legal advice by going  
7 there. He goes, but after all is said and done, and we're  
8 through with that, we're coming back after you and you're going  
9 to have to get your own lawyer. And you know, you're going to  
10 end up paying for that. So you know, so he told the membership  
11 you better think twice about going to the NLRB before you bring  
12 us up on charges.

13 MR. DURYEA: No more questions, Your Honor.

14 CROSS-EXAMINATION

15 Q BY MR. BOREANAZ: You're friends with Ron Mantell; are you  
16 not?

17 A No, we're not close friends.

18 Q Do you consider him a friend?

19 A As a working labor friend, yeah. I mean --

20 Q All right.

21 A -- I don't go to his house. I don't know where he lives.  
22 He's not that close of a friend.

23 Q And you got in the hall earlier today. I'd talked to you  
24 many times over the past 20 years; had I not?

25 A Right.

1 Q And I asked you why you were here today, and you didn't  
2 want to tell me, did you?

3 A Well, I wanted to wait -- I didn't know the legal things  
4 of you know, if I should talk to you before this or --

5 Q Well, did you say that, I'm not sure if I had to talk to  
6 you? Or did you just point to the room and say, we'll have to  
7 wait until we go in there?

8 A Yes.

9 Q Is that what you said?

10 A Yes, that's what I said.

11 Q Okay.

12 A We'll wait until we go in there because I didn't know the  
13 legal things. You know, if I should be talking to you before  
14 the trial.

15 Q Okay. So you indicated that Richard Palladino beat you in  
16 a business manager's race, right?

17 A Yes.

18 Q Okay. And you testified that you retired after you lost  
19 the race, right?

20 A Right.

21 Q Did you plan to retire before you ran for business  
22 manager's position?

23 A Yes.

24 Q Okay. So you were just running for the position even  
25 though you were going to retire, right?

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1 A Yeah. I was going to serve like six months and then  
2 retire after that.

3 Q Okay. So you ran for a position you only intended to fill  
4 for six months?

5 A Yes.

6 Q Okay. And was that so that your executive board could  
7 then appoint the new business manager after you retired six  
8 months after the election?

9 A Well, had it worked that way, yes.

10 Q Okay.

11 A Yeah.

12 Q Now, you indicated that March, April, and May of 2007, you  
13 were in attendance at those meetings, right?

14 A Yes.

15 Q And you testified about some statement you say that  
16 Palladino made. Which meeting do you claim he made this  
17 statement at?

18 A I'm not really sure. I don't know. The meetings run in,  
19 you know, to each other. You know. I don't know.

20 Q Okay.

21 A Yeah.

22 Q Well, we're only talking about four of five months ago,  
23 right?

24 A Yeah. March through April.

25 Q Okay. And when did you first tell Ron that you claimed to

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1 have heard this statement made at this meeting with 40 or 50  
2 other members present?

3 A Maybe a month and a half, two months ago.

4 Q Okay. How did you tell him? Did you call him up on the  
5 phone?

6 A No, no. He approached me because of this case that's  
7 going on.

8 Q He approached you?

9 A Yeah.

10 Q Okay. What did he say to you?

11 A Well, he wanted -- back during the election I approached  
12 Ronnie about you know, voting for me because Dickie didn't like  
13 him. And I gave him an example of why Dickie didn't like him  
14 because Dickie -- I would send Ron out on --

15 Q The question is, what did he say to you? What did Ron say  
16 to you when he approached you when you told him that you had  
17 claimed to have heard this statement made by Dick at a meeting.  
18 What did Ron say to you?

19 A He didn't know that at first. He wanted me to talk about  
20 what Dickie said -- what I told him after you know, during the  
21 election -- our election.

22 Q So Ron contacted you to try and find out if he could get  
23 some dirt about Dick as it relates to him; is that fair to say?

24 A It's just the truth, yes.

25 Q Okay. And so was this a telephone call or in person?

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- 1 A A telephone call.
- 2 Q Okay. And you think it was about a month and a half ago?
- 3 A Yeah, a month. Maybe two months.
- 4 Q Okay. And what did you tell him?
- 5 A Well, I went over you know, what Dickie said, you know,
- 6 about him during the election there. You know, what I told him
- 7 during the election time. You know, I told him that --
- 8 Q To be clear, you're talking about 2008, right?
- 9 A 2009.
- 10 Q 2009?
- 11 A Right.
- 12 Q Okay.
- 13 A Yes.
- 14 Q So you're relating to Ron about things you say that
- 15 Palladino said about him, right?
- 16 A Right.
- 17 Q In 2009?
- 18 A Right. How he didn't like me. Would you like me to
- 19 elaborate on that?
- 20 Q Yes.
- 21 A Okay.
- 22 Q This you remember from 2009, right?
- 23 A Yes, I do.
- 24 Q Okay.
- 25 A Because -- yeah. Because I do remember it. Dickie -- I

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1 told Ronnie, I said, Dickie has never liked you. I said -- and  
2 you know -- because they were big supporters of Dickie; Ronnie  
3 and his whole family, for this election. They were his main  
4 supporters, let me put it that way. So I told him, I said, you  
5 know, Ronnie, I said, after this election you're going to find  
6 out you're not going to go to work because Dickie doesn't like  
7 you. When I sent you out as a steward he would approach me and  
8 say, why are you sending him out as a steward? And I said,  
9 because he's a good laborer and contractors have asked for him.  
10 So Dickie gave me a story about when Ronnie was a kid on his  
11 first job, Dickie was on that job. And Dickie said you know,  
12 he did this and did that on this job. You know. But Ronnie  
13 was just a kid. I don't know, 18 years old, whenever he  
14 started here. Dickie said, he's no good, I had him on this job  
15 and he's just a no good laborer. And so I referred that to  
16 Ronnie because Ronnie said, well, you're just doing this to get  
17 my vote -- just saying this. Then I brought up the story about  
18 him and Dickie working together and all these details that  
19 Dickie gave me. And Ronnie said, well -- he goes, yeah, he's  
20 the only one that would know that. So Ronnie did believe me.  
21 He still didn't vote for me, I don't think. But cause they  
22 were big supporters of Dickie back then. So he wanted to --  
23 Q So to be clear, you told Ron in 2009 as part of your  
24 campaign against Dick, that Dickie had said bad things about  
25 Ron as a laborer?

1 A Right.

2 Q Okay. And so you told as part of your campaign process to  
3 try and get Ron's vote, that Dickie said bad things about you,  
4 right?

5 A But he knew they were true because I brought up these  
6 details that only Dickie and him know. And you know, yeah, I  
7 mean, it was an election so I'm bringing up the truth and  
8 telling him the truth.

9 Q Okay. So you told Ron a month and a half ago these same  
10 things that you're now describing that you also told him in  
11 2009 as part of your campaign process?

12 A Yeah. He asked me, he goes, can you come in and tell you  
13 know, the -- you told me Dickie wouldn't put me to work and  
14 this because all this. I said, yeah, I'll come in and do that.

15 Q So hold on a second. He asked you to come in and talk to  
16 the Board?

17 A No. Come in and talk to you know, he was bringing him up  
18 on charges. You know, if I could be a witness or something.  
19 You know. He was going forward with whatever he was doing.

20 Q So a month and a half ago Ron called you --

21 A Right.

22 Q -- and told you that he was going forward with charges  
23 against Dick and he wanted some dirt on Dick? Or words to that  
24 affect, right?

25 A Well, it wasn't dirt. It was just the truth.

1 Q Okay. And you then -- did you talk just to Ron or did you  
2 talk to somebody else about --

3 A No, just Ron.

4 Q Okay. And when did you first learn you were going to be a  
5 witness here?

6 A About I'd say -- about three weeks -- no. Let's see.  
7 Last week or the week before. Two weeks ago.

8 Q Okay. Did you meet with some of these folks in the --

9 A Yes, I did.

10 Q -- room before your testimony today?

11 A Yeah. Two times.

12 Q Okay. And how long were your meetings?

13 A Half hour to an hour.

14 Q Okay. And I'm still not clear. When Ron calls you --  
15 he's calling you. What's his question to you when he calls you  
16 a month and a half ago? Will you come and testify on my  
17 behalf; was that what he was asking you?

18 A Well, he said -- yeah. As a character reference  
19 basically. And then what Dickie is -- you know, how he felt  
20 about him. Yes.

21 Q Okay. So he -- Ron solicited you as a character witness  
22 and to testify about how Dick felt about Ron as a laborer in  
23 2009, right?

24 A Right.

25 Q Did you talk to Dick after you retired?

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- 1 A Not really.
- 2 Q Did you talk to --
- 3 A Had a little bit of conversations.
- 4 Q Did you talk to Dick about Ron and his capacity as a  
5 laborer after 2009?
- 6 A No.
- 7 Q Do you have any idea what he thinks about Ron as a laborer  
8 since 2009?
- 9 A No.
- 10 Q You have no knowledge whatsoever?
- 11 A No. I don't know why he would change his opinion because  
12 he seemed to be very opinionated about it when he used to  
13 question me why I'd sent him on jobs.
- 14 Q He did question you, right?
- 15 A Yes.
- 16 Q And the reason why he questioned you, is he questioned you  
17 about Ron's skill level, right?
- 18 A No. He just said he was --
- 19 Q Not a good laborer?
- 20 A -- not a good laborer. He comes in late. You know, he  
21 had -- you know, he was a kid. He was a young kid back then.
- 22 Q Okay. You testified that you responded to Dick by saying,  
23 contractors have asked for him, right?
- 24 A No. I said you know, he's a good laborer. I said I made  
25 him steward.

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1 Q Contractors had asked for him, right?

2 A Well, yeah. Contractors --

3 Q Okay.

4 A -- definitely asked for him.

5 Q And what period of time did contractors -- based upon your  
6 experience, ask for Ron Mantell?

7 A I didn't understand that.

8 Q Okay. You were a business manager from what -- 2002 to  
9 2009, right?

10 A Right.

11 Q And during that seven years --

12 JUDGE GOLDMAN: You're resurrecting what I ruled was  
13 irrelevant which is the quality -- the views of his -- the  
14 quality of his work.

15 MR. BOREANAZ: I'm fine with this question.

16 JUDGE GOLDMAN: Ten years -- nine years ago.

17 MR. BOREANAZ: I'm fine with this question. Okay.

18 Q BY MR. BOREANAZ: So your experience was that contractors  
19 called for Ron, right?

20 A Right.

21 Q And that forms the basis of your opinion now that Dick was  
22 out of line when he talked to you in 2009, correct? Or before,  
23 right?

24 A Yeah. Yeah. Because his -- I mean, Ron proved himself on  
25 these jobs and with contractors. There was more than one

1 contractor.

2 Q Okay. Now, you recall this conversation -- by the way,  
3 the election was in 2009, right?

4 A Right.

5 Q And this conversation you say you had with Dick was before  
6 2009, right?

7 A Oh, yeah. In 2009 you know, before, yeah. Because I'd  
8 send Ron --

9 Q How soon before 2009 did you have this conversation with  
10 Dick?

11 A A number of times. You know, in 2009, 2008, 2007. You  
12 know.

13 Q Okay.

14 A When I'd send Ronnie out on jobs.

15 Q And you remember these things clearly?

16 A Yes.

17 Q Okay. Now, you don't remember which of the meetings you  
18 claimed to have heard the innocuous things you testified about  
19 Dick's statement, right?

20 A Right.

21 Q Okay. Just to be clear, a business manager, in your  
22 experience, always provides a report to the membership during  
23 the membership meetings, right?

24 A Exactly.

25 Q That's a normal appropriate function of the business

1 manager during a membership meeting, correct?

2 A Right.

3 Q All right. And you testified that he made some  
4 statements. And we'll get to the statements that you claim  
5 that he made. But he made them in one of those three meetings,  
6 right?

7 A Yeah.

8 Q April --

9 A March.

10 Q March, April, or May of 2007, right? And you're not sure  
11 which one?

12 A No.

13 Q But you know you were at each one, right?

14 A Yes.

15 Q How do you know you were at each one?

16 A Because it was just before the election stuff that was  
17 coming in May and stuff. So I wanted to attend them for sure.

18 Q Okay. You're talking about the new election which you  
19 were not a participant in, right?

20 A Right.

21 Q The election that happened in 2007 where the membership  
22 voted -- or didn't vote. The membership voted by virtues of  
23 nominations and he became the business manager for another  
24 term, correct?

25 A Right.

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- 1 Q All right. And did you support Dick in his nomination for  
2 business manager this certain time?
- 3 A No, I didn't.
- 4 Q Okay. Did you support somebody else?
- 5 A No one ran against Dick.
- 6 Q Did you try and find somebody --
- 7 A Oh, yeah.
- 8 Q -- that would run against him?
- 9 A Yes, I did.
- 10 Q You say oh, yeah because you wanted somebody to replace  
11 him, right?
- 12 A Right.
- 13 Q And you want somebody to replace him now; do you not?
- 14 A Yes, I'd like that.
- 15 Q Now, who did you go to the meeting with? Or did you go on  
16 your own to the March 2017 meeting?
- 17 A By myself.
- 18 Q You drove by yourself?
- 19 A Yes.
- 20 Q And what about the April meeting; did you drive by  
21 yourself?
- 22 A Yes.
- 23 Q And the May meeting?
- 24 A Yes.
- 25 Q At the March meeting who did you speak to?

1 A I don't remember.

2 Q You don't remember which members you spoke to in the March  
3 meeting -- March 2017?

4 A No, I don't. There's a lot of members. I mean, you  
5 speak, you know, different members each meeting too. I mean,  
6 it's not the same people. But yeah, I don't remember.

7 Q What about the April meeting?

8 A I don't --

9 Q Who'd you speak to at the April meeting?

10 A I don't remember.

11 Q Do you recall who you spoke to in the May meeting?

12 A No, I don't.

13 Q Who'd you sit next to at the March meeting?

14 A I didn't sit next to anyone. I stood against the back  
15 wall.

16 Q That's your normal practice --

17 A Yes.

18 Q -- lately, isn't it?

19 A Yes.

20 Q So do you really remember standing at the back wall in the  
21 March of 2017 meeting? Or is it just your normal practice?

22 A Yeah. That's where I stand every meeting.

23 Q Okay. That's your practice?

24 A Yes.

25 Q Okay. So at the March meeting, what topics did the

1 business manager report to the membership as part of the  
2 business manager's report during the March meeting?

3 A I couldn't say specifics. But he did, you know, jobs  
4 coming up.

5 Q Well, that's the general topic of what the report of the  
6 business manager is, right?

7 A Right.

8 Q The jobs coming up. Which jobs do you recall him  
9 mentioning during the March 2017 membership meeting?

10 A I don't recall at this point.

11 Q Which jobs did he reference in the April meeting?

12 A I couldn't tell you.

13 Q And the same; you don't recall on the May either?

14 A No.

15 Q Do you remember if there were any motions made at the  
16 March meeting?

17 A There were motions. I don't know you know, what the  
18 motions were,

19 Q Motions are made at every meeting, right?

20 A Yes.

21 Q So that's an easy question, right?

22 A Right.

23 Q Which ones they were you have no idea, true?

24 A No.

25 Q Now, other than Ron and the Board, who else did you tell

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1 that Palladino made these statements that you now testified to?

2 A I don't think I made it to anyone.

3 Q You say, I don't think; are you sure of that?

4 A Well, I'm not sure. That's why I said, I don't think I  
5 did. You know, I can't recall saying that to anyone else.

6 Q What members do you recall seeing? Now, not talking to.  
7 But members do you recall seeing at the March meeting?

8 A I couldn't tell you the members. I mean, I could see the  
9 union board guys up at the front table. But yeah. The members  
10 I -- you know, one meeting is like the next.

11 Q One meeting's like the next? Is that the same answer it  
12 would be for the April and May meeting? You don't --

13 A Right.

14 Q -- recall which members were present?

15 A Right.

16 Q Now, do you know -- you said that Palladino mentioned  
17 Frank Mantell in a case, right?

18 A Yes.

19 Q Okay. Do you have any idea -- do you know whether or not  
20 Frank sued the union?

21 A Yes.

22 Q How do you know that?

23 A Well, I mean I've heard -- yeah. Or I could have talked  
24 to Frank too. I mean, he's told me that.

25 Q Frank told you he sued the union?

- 1 A Yeah.
- 2 Q Okay.
- 3 A Or is suing the union now.
- 4 Q All right. And so if somebody's suing the union would  
5 that be an appropriate topic to bring to the membership to  
6 report upon?
- 7 A Yeah.
- 8 Q Okay. And so the fact that he mentioned Frank and a  
9 lawsuit, you're not claiming that that was inappropriate, are  
10 you?
- 11 A No.
- 12 Q And you mentioned that he said something about a cell  
13 phone, right?
- 14 A Well, I think that's the case that they won against Frank.  
15 Because he recorded at the meeting with his cell phone.
- 16 Q Did Frank tell you that?
- 17 A No. It was brought up at the meetings.
- 18 Q Which meeting?
- 19 A I don't know.
- 20 Q Now, did you take any notes of this statement you claim  
21 that Palladino mentioned the NLRB?
- 22 A No.
- 23 Q And do you remember specifically word for word what he  
24 said about the NLRB?
- 25 A Not word for word.

1 Q Have you testified here about the -- your recall of the  
2 statements you claim Palladino made as completely and as  
3 thoroughly as you are able?

4 A Yes.

5 Q Is there anything that you would have to look at to  
6 refresh your memory as to what you now claim that Palladino  
7 said in relation to the Board?

8 A No, not at all.

9 MR. BOREANAZ: I have no further questions at this time.

10 JUDGE GOLDMAN: Okay. Well, I have a question. How many  
11 retirees go to these meetings on average?

12 THE WITNESS: Very few. I mean, I've seen two others --  
13 or three others actually. And that's about it.

14 JUDGE GOLDMAN: Okay.

15 THE WITNESS: But not every meeting. I think he only went  
16 to the last couple meetings.

17 JUDGE GOLDMAN: So you're the only retiree who attends  
18 regularly?

19 THE WITNESS: Yeah. And there was a guy Jack -- I can't  
20 remember his last name. He was doing it regularly, but I  
21 haven't seen him in a while.

22 JUDGE GOLDMAN: Any follow-up?

23 MR. DURYEA: Yeah, I've got a quick follow-up.

24 **REDIRECT EXAMINATION**

25 Q BY MR. DURYEA: Regarding the remarks that you testified

1 to that Mr. Palladino made about the NLRB at one of the three  
2 meetings --

3 A Right.

4 Q Is there a reason why those remarks about the NLRB had  
5 stood out clearly in your mind?

6 A Well, sure. It was a bold you know -- well, I wouldn't  
7 say -- it was a bold statement, you know. It was something  
8 that really shouldn't be said. You know, being the former  
9 business manager, I would've never said anything like that. So  
10 it stuck in my mind.

11 MR. DURYEA: No further questions at this time, Your  
12 Honor.

13 RECROSS-EXAMINATION

14 Q BY MR. BOREANAZ: It was so bold and it stuck in your mind  
15 that you can't really articulate in any detail the statement  
16 you claim was made by Mr. Palladino, correct?

17 JUDGE GOLDMAN: Sustained. That's argumentative.

18 MR. BOREANAZ: He's --

19 JUDGE GOLDMAN: You can't -- he testified to it to the  
20 extent he said he could.

21 MR. BOREANAZ: Yeah. But he put on -- he's now trying to  
22 bolster the witness by claiming that he now has a fresh clear  
23 memory as to what was said because in his mind it was so  
24 astonishing that he now recalls it.

25 JUDGE GOLDMAN: I take your point. And I'll judge the

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1 clarity or detail on which it's recalled. But you're arguing  
2 with the witness telling him you can't remember it clearly.

3 MR. BOREANAZ: Am I not allowed to ask a leading question  
4 to suggest that his now claim that it was such a --

5 JUDGE GOLDMAN: You know what?

6 MR. BOREANAZ: -- bold thing that --

7 JUDGE GOLDMAN: Go ahead. Go ahead. I'm -- go ahead. My  
8 mistake.

9 Q BY MR. BOREANAZ: Mr. Connolly, you really don't like Mr.  
10 Palladino, do you?

11 A I don't like the way he's doing business.

12 Q Okay. You disapprove of how he runs the hall, correct?

13 A Right.

14 Q And you want to see him replaced?

15 A Yes.

16 Q And you claim to have heard this statement as best you  
17 have described it, which isn't very clear. You do agree with  
18 that, right?

19 A Well, I mean there was other parts of it that I remember  
20 distinctly that he brought up that his brother brought him up  
21 on charges and his nephew, which I never knew that. And that I  
22 remember because he said his brother. I mean, that was another  
23 statement that was you know, that was part of the whole  
24 statement. But you know, in general, that's what his statement  
25 was.

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1 Q In general?

2 A Yeah.

3 Q Okay.

4 A I mean, the point of the statement was that.

5 MR. BOREANAZ: All right. I don't have anything further.

6 JUDGE GOLDMAN: Okay. Thank you. You're excused.

7 THE WITNESS: I can leave?

8 JUDGE GOLDMAN: You may leave.

9 THE WITNESS: Okay. Thank you.

10 JUDGE GOLDMAN: Okay. What else you got?

11 MR. DURYEA: The General Counsel rests, Your Honor.

12 JUDGE GOLDMAN: Okay.

13 MR. BOREANAZ: I would bring a motion to dismiss the case  
14 on a timeliness issue. I don't know what the theory of their  
15 case is to allow the charge to be brought beyond the six month  
16 period of time. And at this point, they should articulate what  
17 the theory of their case is that would permit them to go beyond  
18 the six months.

19 JUDGE GOLDMAN: Well, I mean --

20 MR. DURYEA: Your Honor, the refusal to refer Ron Mantell  
21 granted that it began in November 2015, the continuing failure  
22 to refusal to refer him is an ongoing violation.

23 JUDGE GOLDMAN: So when do you -- when are you alleging --  
24 so you allege from about November 2015, a more precise date  
25 unknown, but within the knowledge of respondent, respondent has

1 refused to refer R. Mantell?

2 MR. DURYEA: That's correct.

3 JUDGE GOLDMAN: Okay. That's the allegation?

4 MR. DURYEA: That's the allegation, yes.

5 JUDGE GOLDMAN: But you're saying that's not when I should  
6 find a violation from?

7 MR. DURYEA: You should find a violation from within  
8 the -- in the period from when the charge was filed.

9 JUDGE GOLDMAN: Because it's your position it's a  
10 continuing violation; that's what you're saying?

11 MR. DURYEA: That's correct.

12 JUDGE GOLDMAN: Got a case? Got a case for that?

13 MR. BOREANAZ: Well, do I have to prove that --

14 JUDGE GOLDMAN: I'm just asking if you've got a case.

15 MR. BOREANAZ: Well, if they're talking about a continuing  
16 violation, this is not the typical continuing violation case.  
17 The typical continuing violation case is where there is a  
18 repudiation of a contract, where the contract is repudiated on  
19 a regular basis or a periodically reviewed repudiated. In this  
20 case, referrals don't go out every day. The Board hasn't  
21 proved that he was entitled to a referral and was not referred  
22 out on any given day. And so they have to prove that he didn't  
23 get a referral and he should've gotten a referral on a  
24 particular date within the 10B statute. They haven't proved  
25 that at all. No proof whatsoever of that. All they've got is

1 a witness saying, I haven't been referred. But they haven't  
2 proved that he should have been referred. That he was eligible  
3 for referral. And that the referral was a violation of a  
4 policy or a procedure or motivated by some protected activity;  
5 by either the brother's Facebook or by -- in fact, by the  
6 brother's Facebook. So they haven't demonstrated that at all.  
7 What referral did he not get was in the 10B time period?

8 MR. DURYEA: Your Honor, we have -- I mean, Ron Mantell  
9 was on the out of work list. We have in evidence one document  
10 that shows his place on the referral list relative to two  
11 individuals who were lower than him on the list who got  
12 referred out that day.

13 JUDGE GOLDMAN: I mean, we don't even know what the rules  
14 are, do we?

15 MR. BOREANAZ: The witness himself admitted that there  
16 were exceptions to the rule.

17 JUDGE GOLDMAN: Well, I'm asking the General Counsel.  
18 Where have you proven that the -- I mean, have you proven that  
19 he wasn't referred out when he should've been?

20 MR. FEUERSTEIN: Judge --

21 JUDGE GOLDMAN: I mean this is --

22 MR. FEUERSTEIN: Judge --

23 JUDGE GOLDMAN: This is --

24 MR. FEUERSTEIN: Judge, if I may. Mr. Mantell -- we have  
25 in evidence that Mr. Mantell was referred out --

1 MR. BOREANAZ: Can I just --

2 MR. FEUERSTEIN: -- for a --

3 MR. BOREANAZ: Can I just -- hold on. I'm sorry. I  
4 apologize. I don't mean to interrupt you.

5 MR. FEUERSTEIN: I am co-counsel. I am co-counsel.

6 MR. BOREANAZ: No, no. Just --

7 MR. FEUERSTEIN: I'm on the record. I have an appearance.

8 MR. BOREANAZ: I'm totally fine with that. I'm not  
9 objecting to that. If there's going to be some sort of proffer  
10 or theory espoused by counsel, and then they want to try and  
11 resurrect their case with the witness, Mr. Mantell -- Mr.  
12 Mantell should step outside when they lay out --

13 JUDGE GOLDMAN: Well --

14 MR. BOREANAZ: -- what they intend and hope to prove.

15 JUDGE GOLDMAN: Yeah.

16 MR. FEUERSTEIN: I'm talking about what's in the record.

17 JUDGE GOLDMAN: Hold on. That's --

18 MR. FEUERSTEIN: Solely in the record.

19 JUDGE GOLDMAN: Yeah.

20 MR. FEUERSTEIN: That's all I'm talking about.

21 JUDGE GOLDMAN: Let me just -- you've rested.

22 MR. FEUERSTEIN: Understood.

23 JUDGE GOLDMAN: If you're going to try to undo that, he's  
24 right. So I'm --

25 MR. FEUERSTEIN: I'm not talking about anything that's

1 outside the record.

2 JUDGE GOLDMAN: Yes. I mean --

3 MR. FEUERSTEIN: I'm talking about what's in the record.

4 We have on the record a history of 10 years or more of Mr.

5 Mantell being referred out for 1700, 2000, several, several

6 hours. Then this occurs and he stops getting referred out.

7 That is a prima fascia case right there of him not being

8 referred at that point.

9 JUDGE GOLDMAN: So we have two -- we have that issue. And

10 then we have the 10B issue.

11 MR. FEUERSTEIN: As he continues to not be referred out,

12 every -- that is a continuing violation. It is absolutely a

13 continuing violation. It's like a right line case. It's the

14 same --

15 JUDGE GOLDMAN: Well, it's not the referral --

16 MR. FEUERSTEIN: It is a right line case. It's the same

17 thing. So when -- every time they don't do something, it's a

18 new violation. We don't have to prove that they -- in one

19 specific instance, they didn't refer him out. We don't have

20 that within our knowledge. We don't even have that. We don't

21 have that ability because they don't refer him out period.

22 JUDGE GOLDMAN: Okay. I'm just asking --

23 MR. FEUERSTEIN: I'm just -- I'm just --

24 JUDGE GOLDMAN: I understand your theory.

25 MR. FEUERSTEIN: -- explaining.

1 JUDGE GOLDMAN: You might want to -- do you have a case?  
2 I'm going to look at it tonight.

3 MR. FEUERSTEIN: I'll find a case. I think it's pretty --

4 JUDGE GOLDMAN: Pretty clear?

5 MR. FEUERSTEIN: Pretty clear. I don't have -- yeah. I  
6 think it's -- yeah.

7 MR. BOREANAZ: With respect to the proof of just that he  
8 hasn't been referred out, okay, as I indicated before,  
9 referrals don't happen every day. It's refusal to refer out  
10 pursuant to the referral hall procedures.

11 MR. FEUERSTEIN: For two years.

12 MR. BOREANAZ: If he has not been referred out to a  
13 particular job pursuant to the referral hall procedures because  
14 of brother Frank's Facebook posts, then we need to know when  
15 that occurred within the 10B time period. They can't just say  
16 he hasn't been referred out because there are other people on  
17 the list that haven't been referred out as well. And there's  
18 no prima fascia case that those people that weren't referred  
19 out are being retaliated against because Frank Mantell's  
20 Facebook post. They have to make the connection; one to the  
21 Facebook post, and two, they have to say the referral out was  
22 wrong. Not that he just didn't go out. That it was a  
23 violation of the procedures.

24 MR. FEUERSTEIN: With all due respect, this is his  
25 brother. This is Frank Mantell's brother. It's a direct

1 connection. So I --

2 JUDGE GOLDMAN: Well, the only question at this point is  
3 not whether the argument is right or wrong, it's whether I'm  
4 going to take a direct verdict so to speak or a motion to  
5 dismiss at this point. And I'm not inclined to do that.  
6 That's not to say that I'm ruling against your -- that in the  
7 light of full record you're wrong. I'm not ruling that. And  
8 in terms of a statute of limitations, I'm going to take a look  
9 at that this evening. And we can talk about -- I'll rule on  
10 that in the morning. Which is the motion that you made  
11 originally.

12 MR. BOREANAZ: Right.

13 JUDGE GOLDMAN: In terms of whether the whole case fails  
14 because -- based on what they put. I'm inclined to -- to the  
15 extent you made that motion, I'm inclined to deny and let you  
16 put on your case. I want to hear it. But I want to take a  
17 look at the statute of limitations. Because I think -- you  
18 allege it started beyond the statute of limitations?

19 MR. FEUERSTEIN: Absolutely, Judge. Absolutely, Judge.

20 JUDGE GOLDMAN: That's your allegation. I mean, why  
21 wouldn't that be every time they failed -- every time they  
22 unlawfully -- I know you think they didn't. But if they did --  
23 if they were ill motivated in the failure to refer, would that  
24 be time bar. I mean, wouldn't that -- every time they do it --

25 MR. BOREANAZ: Absolutely not.

1 JUDGE GOLDMAN: No?

2 MR. BOREANAZ: No. I mean, to be connected to each other  
3 there has to be some connection to each failure to refer to the  
4 same animas. To the same animas for retaliation for the  
5 Facebook post by the brother. I mean, for example, if they  
6 don't send him out because of a computer error. Or they don't  
7 send him out because --

8 JUDGE GOLDMAN: Well, you agree with that. You're just  
9 saying that it is the animas each time?

10 MR. DURYEA: That it is the animas each time. And I would  
11 point out that Mr. Boreanaz keeps on harping on the fact that  
12 this is traced back to the Facebook posts themselves that were  
13 in the summer of 2015. There are other relevant days. The  
14 relevant date of when Frank Mantell filed his Labor Board  
15 charge. That happened in November of 2015. That's the same  
16 date that Ron Mantell stopped being referred out.

17 MR. BOREANAZ: That's not when it happened.

18 JUDGE GOLDMAN: Well, anyway that is a -- that's a  
19 knowable fact.

20 MR. DURYEA: Well, I'm willing to --

21 MR. BOREANAZ: So hold on a second. The complaint alleges  
22 that he -- Mantell suffered retaliation because of the  
23 protected activity referenced in the charge. Not because of  
24 the charge. But because of the protected activity in the  
25 charge.

1 JUDGE GOLDMAN: Well, the charge is a protected activity.

2 MR. BOREANAZ: The charge is always protected, of course.

3 That's not what it was alleged as.

4 MR. FEUERSTEIN: But it's not --

5 MR. BOREANAZ: It didn't allege that as a result of the  
6 filing --

7 MR. FEUERSTEIN: The statute of limitations is not about  
8 animas though. It's not about when the animas occurred.  
9 That's irrelevant. It's when the violation occurred. The  
10 violation is not the animas. The violation is the act.

11 MR. BOREANAZ: I'm not arguing about it. That's talking  
12 about it.

13 MR. FEUERSTEIN: But that's what the law is.

14 MR. BOREANAZ: The allegation is --

15 JUDGE GOLDMAN: No, I agree with that. I mean --

16 MR. BOREANAZ: He rested. The allegation is crystal clear  
17 that these things happened to Ron because of a protected  
18 activity referenced in the charge which are the Facebook posts.

19 MR. FEUERSTEIN: If someone has union animus ten years  
20 ago --

21 JUDGE GOLDMAN: Yeah, I don't --

22 MR. FEUERSTEIN: -- and then it gets -- there's a  
23 retaliation today, it's not time barred because the violation  
24 is today.

25 JUDGE GOLDMAN: Yeah.

1 MR. FEUERSTEIN: That's just -- that is --

2 MR. BOREANAZ: I'm not arguing that point.

3 MR. FEUERSTEIN: Okay. So we're --

4 MR. BOREANAZ: I'm not arguing that point.

5 MR. FEUERSTEIN: I guess I'm confused then. I'm a little  
6 confused.

7 MR. BOREANAZ: The point is is that the protected activity  
8 -- the Facebook post, is the motivation for the retaliatory  
9 acts alleged against Ron.

10 JUDGE GOLDMAN: Well, I don't have -- I mean, I can get  
11 the charge. But I'm looking at the complaint. It's because of  
12 Frank Mantell engaged in protected concerted conduct. And that  
13 you know -- I think really, as Mr. Feuerstein's said, when the  
14 protected conduct occurred is not the issue for 10B.

15 MR. BOREANAZ: It's not technically --

16 JUDGE GOLDMAN: It's not technically.

17 MR. BOREANAZ: It's not technically.

18 JUDGE GOLDMAN: The issue is when the respondent's --

19 MR. BOREANAZ: There has to be a connection between the  
20 two. And if one was ten years ago --

21 JUDGE GOLDMAN: But that's a matter of weight. I mean,  
22 I --

23 MR. BOREANAZ: Well, it's --

24 JUDGE GOLDMAN: I mean, that would --

25 MR. BOREANAZ: It's not a matter of weight.

1 JUDGE GOLDMAN: The longer the periods --

2 MR. BOREANAZ: It's a matter of did they make the  
3 connection. And the allegation, just to be clear --

4 JUDGE GOLDMAN: Well, we're switching arguments now. I  
5 think that's an argument you can make. It's just whether it --

6 MR. BOREANAZ: And the reason why --

7 JUDGE GOLDMAN: -- makes it time barred. I don't think it  
8 makes it time bared.

9 MR. BOREANAZ: And the reason why I bring it up at this  
10 point is because the allegation -- they're trying to draw that  
11 November was the spear of the protected activity by Frank so  
12 that they can try and parlay that and dove tail that into his  
13 claim -- Ron's claim that the retaliatory acts start close in  
14 time in November of 2015. My point in raising this issue is  
15 that the complaint focuses more on the protected activity and  
16 the Board charge, the Facebook posts, and because they have a  
17 problem because Ron got sent out to jobs in August, September,  
18 and October, after the thrust of the protected activity  
19 occurred.

20 JUDGE GOLDMAN: Well, so you'd say it's an unhappy  
21 coincidence. But they look at it differently.

22 MR. BOREANAZ: I'm just --

23 JUDGE GOLDMAN: I mean --

24 MR. BOREANAZ: -- responding to their theory of the case.

25 MR. FEUERSTEIN: But that's just an argument.

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1 JUDGE GOLDMAN: Yeah, I --

2 MR. FEUERSTEIN: That's not a 10B issue.

3 JUDGE GOLDMAN: Yeah, I --

4 MR. BOREANAZ: I agree. That's not a 10B issue.

5 MR. FEUERSTEIN: Yeah. That's not a 10B issue.

6 MR. BOREANAZ: I'm not raising it as a 10B issue.

7 MR. FEUERSTEIN: Okay.

8 MR. BOREANAZ: I'm just rebutting --

9 JUDGE GOLDMAN: That's an argument. I guess I'm not  
10 willing to say you're right, let's go home. I'm going to take  
11 a look at this. Be prepared to put on your case tomorrow  
12 morning. 9 a.m. work for everybody?

13 MR. BOREANAZ: I've got people coming from Niagara Falls  
14 which is about 35 minutes away. I probably have to meet with  
15 them a little bit. So can we start at 9:30?

16 JUDGE GOLDMAN: Sure. We'll stand in recess until 9:30.  
17 I'll give the 10B some thought. It does strike me that without  
18 commenting on the weight of the evidence or the merits of the  
19 case, that this would -- if the motivation for not referring  
20 someone out is protected activity that occurred even some time  
21 ago, it wouldn't be -- or even if they began -- if the illegal  
22 action began beyond the 10B period I think my instinct is that  
23 they're right. That every time they don't put someone -- every  
24 time they don't refer someone out for discriminatory reasons,  
25 it would be an illegal act.

1           So you're agreeing there's no violation to be found more  
2           than six months before the charge was filed?

3           MR. FEUERSTEIN: I mean, violation?

4           JUDGE GOLDMAN: Violation.

5           MR. FEUERSTEIN: Yeah. Because the compliance issue, I  
6           would not. I mean, the compliance issue is as whatever the  
7           damage is.

8           JUDGE GOLDMAN: What the order would say.

9           MR. FEUERSTEIN: Yeah. Right.

10          JUDGE GOLDMAN: So you're not even asking for an order  
11          before six months before April 12th, right?

12          MR. FEUERSTEIN: Right.

13          JUDGE GOLDMAN: Okay. All right. Let's stand in recess  
14          until 9:30 a.m. We'll see you then.

15          (Whereupon, the hearing in the above-entitled matter was  
16          recessed at 4:50 p.m. until Thursday, October 12, 2017 at 9:30  
17          a.m.)

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 3, Case Numbers 03-CB-196682, 03-CB-201412, Laborers International Union of North America, Local Union of North America, Local Union No. 91, (Scrufari Construction Co., Inc.), and Ronald J. Mantell, and Scrufari Construction Co., Inc., at the Buffalo Hearing Room, Suite 630, 130 S. Elmwood Avenue, Buffalo, New York 14202, on Wednesday, October 11, 2017, 10:00 a.m. was complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



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Davette Repola  
Official Reporter

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