United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of April, two thousand twenty.

Present:
John M. Walker, Jr.,
José A. Cabranes,
Robert D. Sack,
Circuit Judges.

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner,	:	Nos. 19-3699 (Lead);
	:	19-3925 (XAP)
v.	:	
	:	Board Case No.:
LABORERS' INTERNATIONAL UNION OF	:	03-CB-225477
NORTH AMERICA, LOCAL UNION NO. 91	:	
	:	
Respondent.	:	

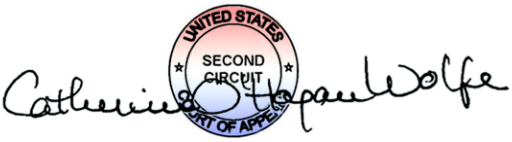
JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Laborers' International Union of North America, Local Union No. 91, its officers, agents, and representatives, enforcing its order dated October 21, 2019, in Case No. 03-CB-225477, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Laborers' International Union of North America, Local Union No. 91, its officers, agents, and representatives, shall abide by said order. (See attached Order and Appendix).

Mandate shall issue forthwith.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



NATIONAL LABOR RELATIONS BOARD

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 91

ORDER

Laborers' International Union of North America, Local Union No. 91, Niagara Falls, New York, its officers, agents, and representatives, shall

1. Cease and desist from

   (a) Removing employees from its out-of-work referral list in retaliation for activity protected by Section 7 of the Act, including criticizing the Union, criticizing union officers for matters related to the performance of their official Union duties, filing charges with the Board, giving testimony in Board investigations and proceedings, and otherwise assisting in Board investigations and proceedings.

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

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

   (a) Notify Frank Mantell in writing that it will make employment referrals available to him in his rightful order of priority, without regard to his exercise of Section 7 rights.

   (b) Make Frank Mantell whole for any loss of earnings and other benefits suffered as a result of removing him from the out-of-work referral list, in the manner set forth in the remedy section of this decision, above.

   (c) Within 14 days from the date of this Order, remove from its files any reference to the removal of Mantell from its out-of-work referral list, and, within 3 days thereafter, notify him in writing that this has been done and that his removal from the list will not be used against him in any way.

(d) Compensate Frank Mantell for the adverse tax consequences, if any, of receiving a lump-sum backpay award above, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring hall and referral records, and any other records and documents, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its hiring hall in Niagara Falls, New York, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. *J. Picini Flooring*, 356 NLRB 11 (2010). Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 3, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist any union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT remove any of you from our out-of-work referral list in retaliation for activity protected by Section 7 of the Act, including criticizing the Union or the manner in which union officers perform their duties, and also including filing unfair labor practices with the National Labor Relations Board, providing information to the Board or otherwise assisting the Board in any investigation or proceeding, and giving testimony during any Board investigation, hearing or proceeding.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL notify Frank Mantell in writing that we will make employment referrals available to him in his rightful order of priority, without regard to his exercise of Section 7 rights.

WE WILL make Frank Mantell whole for any of loss earnings or other benefits suffered as a result of our removing him from our out-of-work referral list.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the removal of Mantell from our out-of-work referral list, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that his removal from the list will not be used against him in any way.

WE WILL compensate Frank Mantell for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 91

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

Niagara Center Building, 130 S. Elmwood Avenue, Suite 630, Buffalo, NY 14202-2465
(716) 551-4931, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/03-CB-225477 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.