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April 29, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its territories, and Canada, Philadelphia Local No. 8 (Elliott Lewis Convention Services, LLC) and Martin C. McIntyre. Cases 04–CB–216541 and 04–CB–221871

On March 11, 2019, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel also filed cross-exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions, cross-exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.¹

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel's cross-exceptions seek to correct the judge's misidentification of Martin McIntyre as "Michael" McIntyre. We correct this inadvertent mistake.

The Respondent excepts to the judge's Conclusion of Law that, among other things, it violated Sec. 8(b)(1)(A) by bringing an internal union charge against Martin McIntyre on April 30, 2018, for soliciting referral jobs without the use of the hiring hall procedures. The Respondent, however, does not state, either in its exceptions or supporting brief, any grounds on which the judge's conclusion should be overturned. Therefore, in accordance with Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations, we shall disregard this exception. See *Natural Life, Inc., d/b/a Heart and Weight Institute*, 366 NLRB No. 53, slip op. at 1 fn. 3 (2018); *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

We find merit to the Respondent's contention that the judge's decision conflated the term "house crew" with the term "core workforce." The record establishes that McIntyre was removed from the house crew—the Respondent's preferred group for work at the Philadelphia Convention Center—and placed on the hiring hall list established for the core workforce. Nevertheless, the record also establishes that the house crew members are generally called first for decorator and carpentry work, and thus the Respondent's removal of McIntyre from the house crew reduced his opportunities for employment. In adopting the judge's finding that the Respondent violated Sec. 8(b)(1)(A), we rely only on his finding that the Respondent breached its duty of fair representation owed to McIntyre when it removed him from the house crew. See *Stage Employees IATSE Local 41 (Theater of Stars)*, 278 NLRB 89, 92 (1986) (finding that respondent union breached its duty of fair representation in violation of Sec. 8(b)(1)(A) when it departed from established referral procedures by moving registrants from the preferred A list to the C list without establishing that its actions were pursuant to a valid union-security provision or necessary to its effective performance of its representative function).

Contrary to our dissenting colleague, we find that the Respondent has not established that McIntyre's removal was necessary for the effective performance of its representative function. The Respondent's contention that McIntyre was removed in part because he solicited work directly from a contractor in violation of hiring hall rules was raised for the first

time at the hearing, almost a year after McIntyre's removal. The only evidence cited by the Respondent in support of its position is uncredited hearsay. That is, Union President Michael Barnes testified that Steward Axel Barnes called him and said that "he [Axel] got a call from [contractor] Rich Kelly, [and Axel] believe[d] that Rich Kelly was solicited by McIntyre for the job." Michael Barnes' testimony as to what Axel Barnes said was hearsay, and Michael Barnes' testimony as to what Axel Barnes said Rich Kelly said was double hearsay. As mentioned above, we find no basis for reversing the judge's credibility findings. Even if we were to consider this evidence, however, in light of conflicting evidence in the record and in the absence of corroborating evidence from the contractor, the Respondent's uncredited hearsay evidence does not support its contention that engaging in self-solicitation was one of the reasons why McIntyre was removed. Compare *Acklin Stamping Co.*, 355 NLRB 824, 826 (2010) (reversing the judge, the Board found, based in part on the employer's corroborating testimony regarding the employee's lack of qualifications, that the union did not violate Sec. 8(b)(1)(A) by requesting the employee's discharge); *IATSE Local 150 (Mann Theatres)*, 268 NLRB 1293, 1293–1295 (1984) (reversing the judge, the Board found that based on four employers' testimony regarding the employee's poor work performance, the union did not violate Sec. 8(b)(1)(A) for refusing to refer the employee).

Significantly, the Respondent only offered the alleged self-solicitation as one of the bases for selecting McIntyre for removal because it allegedly decided to reduce the size of the house crew. That is, Union President Barnes testified that the Union decided to reduce the house crew from 18 to 15, and that McIntyre was selected as one of the three to be dropped from the house crew because he solicited work from contractors. But the judge discredited Barnes' testimony that he decided to reduce the size of the house crew from 18 to 15, and we have upheld the judge's credibility determinations. Since there was never a decision taken to reduce the size of the house crew, there was no reason for the judge to address testimony concerning why McIntyre was selected for a house-crew reduction as part of a decision that never happened. Having discredited testimony regarding the former, the judge also implicitly discredited testimony regarding the latter.

We amend the judge's remedy and modify the recommended Order in several respects. We shall order the Respondent to compensate McIntyre for the adverse tax consequences, if any, associated with receiving a lump-sum backpay award. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). In addition, in accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), the Respondent shall compensate McIntyre for his reasonable search-for-work and interim employment expenses, if any,

ORDER

The National Labor Relations Board orders that the Respondent, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories, and Canada, Philadelphia Local No. 8, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Removing employees from the Philadelphia Convention Center house crew for arbitrary, discriminatory, and/or bad faith reasons, including for objecting to the way it operates its hiring hall.

(b) Filing internal union charges against its members for filing an unfair labor practice charge with the National Labor Relations Board.

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

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

(a) Within 14 days from the date of this Order, offer to restore Martin McIntyre to his former position on the house crew at the Philadelphia Convention Center, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Martin McIntyre whole for any loss of earnings and other benefits suffered as a result of his unlawful removal from the house crew, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate Martin McIntyre for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful removal of Martin McIntyre from the house crew and the unlawful union charges against him, and within 3 days thereafter, notify Martin McIntyre in writing that this has been done and that his removal from the house crew and union charges will not be used against him in any way.

(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 payroll records, social security payment records, timecards, personnel records

regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We shall also modify the judge's recommended Order to conform to the

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Philadelphia, Pennsylvania facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, 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. 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 14 days after service by the Region, deliver to the Regional Director for Region 4 signed copies of the notice in sufficient number for posting by the Employer at its Philadelphia, Pennsylvania facility, if it wishes, in all places where notices to employees are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 4 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.

Dated, Washington, D.C. April 29, 2020

John F. Ring,

Chairman

Marvin E. Kaplan,

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER EMANUEL, dissenting in part.

I agree with my colleagues that the Respondent violated Section 8(b)(1)(A) by bringing internal union charges

Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

against Charging Party Martin “Chris” McIntyre because he filed charges with the Board. However, I would find that the Respondent did not violate Section 8(b)(1)(A) when it moved McIntyre from the preferential “house crew” and returned him to the Respondent’s normal hiring hall list on March 6, 2018.

When a union refuses to refer an individual from its hiring hall, and this refusal is not due to a failure to pay dues or other fees, there arises a presumption that the refusal is intended to coercively encourage union membership in violation of Section 8(b)(1)(A). *International Longshore & Warehouse Union (Pacific Maritime Assn.)*, 365 NLRB No. 149, slip op. at 9 (2017), citing *IATSE Local 838 (Freeman Decorating)*, 364 NLRB No. 81, slip op. at 4 (2016). However, this presumption can be rebutted by a showing that the union did not violate its duty of fair representation, and that its actions were necessary for the effective performance of its representative function. *Id.*

Here, the Respondent presented evidence from multiple witnesses establishing that the determining factor for removing McIntyre was his circumvention of the hiring hall process by soliciting jobs directly from a contractor. On March 5, the Respondent’s president received word that McIntyre was attempting to solicit a job placement from Rich Kelly, a contractor for Freeman Decorating Company. This self-solicitation of work was in direct violation of the Respondent’s Constitution, which provided that a member who solicits referral jobs or fills referral jobs without the use of the hiring hall procedure could be suspended from using the hiring hall entirely. Accordingly, McIntyre was removed from his job assignment scheduled for the following day and was informed via email on March 6 that he was being removed from the house crew. The Board has found on numerous occasions that a Respondent meets its rebuttal burden of establishing that it did not violate its duty of fair representation and that its actions were necessary for the effective performance of its representative function when it refuses to refer an employee from its hiring hall because that employee’s conduct impacted the integrity of its job-referral system. *Boilermakers Local Lodge No. 40 (Envirotech Corp.)*, 266 NLRB 432, 433–434 (1983) (rebuttal burden met where employee had solicited work directly from employers in violation of hiring hall rules); accord *United Brotherhood*

of Painters, Decorators & Paperhangers of America, Local Union No. 487 (American Coatings, Inc.), 226 NLRB 299, 301 (1976). Here, the Respondent exercised its discretion not to suspend McIntyre, or even to remove him from the hiring hall entirely, but instead to move him from the preferential house crew to the regular hiring hall as a consequence for his conduct.

This legitimate, nondiscriminatory reason for McIntyre’s removal from the house crew is inexplicably absent from the judge’s decision, with the judge failing to either credit or discredit the testimony presented above.¹ Moreover, the judge’s chronology of events does not comport with the timeline established by the record evidence. In effect, the judge’s finding of a violation puts the proverbial cart before the horse. The judge determined that McIntyre was removed from the house crew on March 6 in retaliation for his complaints about his removal from a job placement via texts sent on March 5 and an email sent on March 6. However, this chronology of events is undercut by McIntyre’s own statements; specifically, the text messages that form the crux of the judge’s erroneous unfair labor practice finding. In his initial texts, sent at roughly 5:16 p.m. on March 5, McIntyre states, “Tomorrow is the show and after being on the flower show and getting kick (sic) off the job Rich [Kelly] went back to New York and I got cut.” Simple causality thus necessarily requires that McIntyre sent these texts *only after* he checked his schedule in the evening of March 5 and saw that he “got cut” and had been removed from his job placement scheduled for the following day. And why was he removed from this job placement? Because, as established by the Respondent, he had been caught soliciting work directly from a contractor earlier that day, in violation of the Respondent’s Constitution and the effective operation of its hiring hall.

In sum, I would find that the Respondent did not violate Section 8(b)(1)(A) when, on March 6, it removed McIntyre from its preferential house crew for his direct solicitation of work the day prior.

Dated, Washington, D.C. April 29, 2020

William J. Emanuel,

Member

¹ Specifically, the Respondent’s principal decisionmaker behind McIntyre’s removal, President Michael Barnes, testified that “one of the factors that was the determining factor was that I believed that Mr. McIntyre was approaching the employers to solicit foreman’s positions at the Convention Center, which was in violation of policy that we clearly established.” This testimony was corroborated by an additional witness, Steward Axel Barnes, who testified that he had spoken to contractor Rich Kelly on March 5 and confirmed that Kelly had never requested McIntyre by name, despite McIntyre’s insistence that Kelly had requested him

for a position. This testimony was left entirely unaddressed by the judge. Instead, the judge’s sole credibility finding regarding McIntyre’s removal from the house crew found that the *one* of the Respondent’s proffered reasons for removing McIntyre, President Michael Barnes’ expressed desire to reduce the house crew from 18 to 15 members, was pretextual. However, the judge neither credited nor discredited Barnes’ other testimony regarding motive, and entirely failed to address the additional evidence presented above regarding the March 5 incident.

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT remove you from the Philadelphia Convention Center house crew for arbitrary, discriminatory, and/or bad faith reasons, including for objecting to the way we operate our hiring hall.

WE WILL NOT file internal union charges against you for filing an unfair labor practice charge with the National Labor Relations Board.

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

WE WILL, within 14 days from the date of the Board's Order, offer to restore Martin McIntyre to his former position on the house crew at the Philadelphia Convention Center, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Martin McIntyre whole for any loss of earnings and other benefits resulting from his unlawful removal from the house crew, less any net interim earnings, plus interest, and WE WILL also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Martin McIntyre for the adverse tax consequences, if any, of receiving a lump-sum back-pay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Martin McIntyre's unlawful removal from the house crew and the filing of unlawful union charges against him, and WE WILL, within 3 days thereafter, notify him in writing that we have done so and that we will not use his removal from the house crew or the union charges we filed against him in any way.

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

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



David Rodriguez, Esq., for the General Counsel.
Regina C. Hertzog, Esq. (Cleary, Josem & Trigiani), of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

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

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

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent Union, IATSE Local 8, is a labor organization within the meaning of Section 2(5) of the Act. It represents employees who work at the Philadelphia Convention Center (PCC). These employees' nominal employer, Elliott-Lewis Convention Services, LLC, and Freeman Decorating Company, for whom the Charging Party performed services at the PCC, are employers engaged in commerce with the meaning of Section 2(2), (6), and (7) of the Act. Elliott-Lewis, has an office in

Pennsylvania and purchases and receives goods valued in excess of \$50,000 directly from points outside of Pennsylvania. Freeman has an office in New Jersey and has performed services valued in excess of \$50,000 outside of New Jersey.

II. ALLEGED UNFAIR LABOR PRACTICES

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

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

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

Removal of McIntyre from the House Crew

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

Dear Brother McIntyre,

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

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

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

On September 19, 2017 you were sent the attached email.

Based on additional information reported to this office after this email was sent, you are being removed from the house crew at the convention center.

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

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

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

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

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

The Filing of Internal Union Charges

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

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

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

On June 6, 2018, Joseph Baliski, the Union's recording secretary, filed another internal union charge against McIntyre, accusing him of leaving work at the PCC 50 minutes early on May 2,

2018, without the consent of his steward or head of his department. On May 3, Union President Michael Barnes told McIntyre that he would have to appear before the Union's Executive Board as a result of the May 2 incident because he already had union charges pending against him. Barnes told another employee, who was also accused of leaving work early, that he had nothing to worry about since it was his first violation of union rules. Recording Secretary Baliski confirmed at this hearing that whether a member is brought up on internal union charges depends of their prior history and that McIntyre was brought up on charges on June 6, at least in part due to the charges that were subsequently withdrawn (Tr. 166–167).¹

Analysis

Removal from the House Crew

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

A union's duty of fair representation applies to all union activity. A union may not treat a unit employee in a manner that is arbitrary, discriminatory or in bad faith, *Vaca v. Sipes*, 386 U.S. 171 (1967); *Steelworkers v. Rawson*, 495 U.S. 362 (1992); *Air Line Pilots Assn. v. O'Neil*, 499 U.S. 65 (1991). The Union's conduct with regard to Chris McIntyre was arbitrary, discriminatory and in bad faith. It is not necessary for the Union to effectively perform its representative functions to punish McIntyre for complaining about his assignments or questioning whether the Union is operating its hiring hall fairly.

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

The Board will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. "It is enough that the

employees' protected activities are causally related to the employer action which is the basis of the complaint. Whether that 'cause' was the straw that broke the camel's back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act." *Wright Line*, 251 NLRB 1083, at 1089 fn. 14; accord: *Bronco Wine Co.*, 256 NLRB 53, at 54 fn. 8 (1981).

Filing Internal Union Charges Against Michael McIntyre

It is a violation of Section 8(b)(1)(A) for a Union to file internal charges against a member for filing an unfair labor practice charge, *IBEW Local 34*, 208 NLRB 639, 641–642 (1974). This is so even if the member has failed to exhaust internal union procedures, *Western Exterminator Co.*, 223 NLRB 1270, 1282 (1976). This record makes it clear that the Union would not have filed the charges against McIntyre or brought him up before the Executive Board but for the fact that he had filed the initial charge in this case. Therefore, the April 30, 2018 and the June 6, 2018 charges were filed and pursued in violation of the Act.

CONCLUSIONS OF LAW

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

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

REMEDY

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

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

ORDER

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

1. Cease and desist from
 - (a) Removing employees from the Philadelphia Convention

However, the Union, not Elliott Lewis removed him. The facts, which were fully litigated establish a violation of 8(b)(1)(A), *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F. 3d 130 (2d Cir. 1990).

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

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

³ The General Counsel alleges that Respondent violated Sec. 8(b)(2) in causing Elliott Lewis to remove McIntyre from the house crew.

Center house crew for arbitrary, discriminatory and/or bad faith reasons, including their objections or criticisms as to how the Union operates its hiring hall.

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

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

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

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

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

(c) Respondent IATSE Local 8 shall compensate Michael McIntyre for any search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

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

(e) Within 14 days after service by the Region, Local 8 shall post its offices and hiring hall in Philadelphia, Pennsylvania copies of the attached notices marked "Appendix"⁵ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees and/or members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the office involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a

copy of the notice to all members and other persons who have signed up at the hiring hall at any time since March 6, 2018.

(f) Respondent Local 8 shall preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 21 days after service by the Region, Respondent Local 8 shall file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

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

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

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

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

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

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

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

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

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

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

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

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS, AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES,
AND CANADA, PHILADELPHIA LOCAL NO. 8,
AFL-CIO

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

