

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

<b>IN THE MATTER OF</b>	:	
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<b>TRUCK DRIVERS, CHAUFFEURS AND</b>	:	
<b>HELPERS LOCAL UNION NO. 100,</b>	:	
<b>AFFILIATED WITH THE</b>	:	<b>CASE NO. 09-CB-249487</b>
<b>INTERNATIONAL BROTHERHOOD OF</b>	:	
<b>TEAMSTERS (Beta Productions, LLC),</b>	:	
	:	
<b>Respondent,</b>	:	<b><u>RESPONDENT’S MOTION FOR</u></b>
	:	<b><u>SUMMARY JUDGMENT AND</u></b>
<b>and</b>	:	<b><u>SUPPORTING MEMORANDUM</u></b>
	:	
<b>SAMUEL J. BUCALO, AN INDIVIDUAL,</b>	:	
	:	
<b>Charging Party.</b>	:	

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Respondent Teamsters Local Union No. 100, an affiliate of the International Brotherhood of Teamsters (“Local 100” or “the Union”), referred to in the case caption as Truck Drivers, Chauffeurs and Helpers Local Union No. 100, hereby moves for summary judgment dismissing the Complaint in this matter pursuant to Section 102.24(b) of the Rules and Regulations of the National Labor Relations Board. The Union respectfully submits that there are no material factual disputes and that, applying the existing legal standards to the uncontroverted facts, the Union is entitled to judgment as a matter of law.

The undisputed evidence as shown by the affidavit testimony establishes that, due to an inadvertent error by a Union office employee in the preparation of Local 100’s group-based lists for referral to driving work in the movie industry, a single applicant was incorrectly placed in a higher group than he should have been due to his residence outside Local 100’s geographic coverage area. That driver then was incorrectly referred for work out of the proper order on the

film at issue in this case based on that incorrect placement. This admitted error was no more than an honest mistake in the performance of a clerical task and does not rise to the level of a breach of the duty of fair representation toward the Charging Party or any other individual, nor did it serve to coercively encourage union membership in violation of Section 8(b)(1)(A). Therefore, the Union is entitled to judgment as a matter of law.

### **Factual Background**

The facts of this matter are set forth in the attached affidavits of Local 100 Administrative Assistant Sarah McFarland (“McFarland Aff.”) and Transportation Captain Craig Metzger (“Metzger Aff.”). Local 100 is an amalgamated local in Cincinnati, Ohio; its membership varies but at the end of 2019 was approximately 4800. The Union as one small part of its services provides employers who are producing film and television projects (collectively, the “movie industry”) in greater Cincinnati with referrals for drivers. The movie industry in the area is highly sporadic and unreliable; as Mr. Metzger attested, there were only two productions in or around Cincinnati in 2018 and only four in 2019, one of which filmed there for just four days. The greatest number of drivers on the Local’s referral lists has been 40, less than one percent of the Union’s total membership. McFarland Aff. ¶ 2; Metzger Aff. 2.

For some years, and at least since Mr. Metzger became the unpaid Captain for the movie industry in approximately 2014, the Union had an exclusive referral system, in which the Local provided the requisite number of drivers a production company needed for a particular project. Until 2018, this system was managed informally, with the Captain keeping rough lists and calling drivers based on their qualifications and then in order of their experience in the movie industry. Shortly after Mr. Metzger was appointed as the Captain in 2014, he also began to refer retired drivers for such jobs, originally because certain films needed drivers with experience doing “car

haul” work, driving the specialized tractor-trailers that transport vehicles that will be driven on screen and be seen in the film. The retirees were treated as a separate group and called for film work only if their special skills were needed or if there was overflow work that the non-retired drivers could not cover. Metzger Aff. ¶¶ 1, 3, 6.

The Union developed a formal, written policy to administer the movie industry referrals that was approved by its Executive Board in May 2018. Metzger Aff. 3 & Exhibit A thereto. This policy categorized the drivers into seven different groups or sub-lists, based on their experience in the industry and their number of jobs in film or television productions in recent years, as well as their status as local residents or not and whether they were receiving pension or other retirement benefits. The groups were as follows:

Group I: Drivers residing in the Tri-State area<sup>1</sup> with at least four years of experience and six productions in the last four years in the geographic jurisdiction of Local 100

Group II: Drivers residing in the Tri-State area with at least two years of experience and three productions in the last two years in the geographic jurisdiction of Local 100

Group III: Drivers without the requisite experience residing in the Tri-State area

Group IV: Drivers not residing in the Tri-State area with at least four years of experience and six productions in the last four years in the geographic jurisdiction of Local 100

Group V: Drivers with at least one year of experience not residing in the Tri-State area

Group VI: Drivers without the requisite experience and not residing in the Tri-State area

Group VII: Drivers who are receiving a pension or other retirement benefits

The written policy was disseminated to all individuals who had worked or expressed interest in the movie industry; they were asked to return a resume and a completed application form in order to be placed on the list for referrals. McFarland Aff. Exhibit A. Ms. McFarland,

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<sup>1</sup> The policy defines this as Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Pike, Scioto and Warren Counties in Ohio; Boone, Campbell and Kenton Counties in Kentucky; and Dearborn, Franklin, Ohio, Ripley and Switzerland Counties in Indiana.

who has worked as an office clerical employee at Local 100 for some 33 years, used those materials to compile the referral lists and groups. She followed the guidelines of the written policy and looked at the applicants' years of experience and number of projects, as well as their residence and their status as retirees. Whether or not the individual was or had been a dues-paying member of Local 100 was not considered, as the policy specifically precludes consideration of membership. Furthermore, as Ms. McFarland's affidavit explains, the movie industry drivers typically pay dues only when working under a collective bargaining agreement with a union-security provision and then withdraw from union membership at the conclusion of the production. McFarland Aff. ¶¶ 1, 4-6.

Mr. Metzger as the Transportation Captain used the lists Ms. McFarland prepared, with periodic updates, to make referrals for projects starting after the effective date of the policy and through August 2019, when the Union determined to discontinue the exclusive referral system. The complaint issued in this case, on a charge filed by former Local 100 Secretary-Treasurer and current movie industry driver-applicant Sam Bucalo in early October 2019, alleges that the Union "referred employees in Group V to employment with the Employer ahead of employees in Groups I, II and III," contrary to the provisions of the policy requiring referrals to be made through the lists in descending order of priority. Complaint ¶ 5(c). The Complaint further alleges that this conduct restrained and coerced employees in the exercise of their rights under Section 7 of the Act and caused the Employer to discriminate against employees in violation of the Act.

After the present charge was filed, it was discovered that a single individual, Aaron Robinson, was mistakenly listed in Group III, which comprises local-resident drivers without the experience to qualify them for Group I or II. He lives in Dayton, Ohio, in Montgomery County, which is outside the counties defined as the applicable geographical area. Mr. Robinson did not

have one year of experience in the movie industry and should have been listed in Group VI, for non-local drivers without the requisite experience; therefore, he was incorrectly referred ahead of several employees who were properly placed in Group III or Group IV.<sup>2</sup>

Ms. McFarland's affidavit testimony shows that Mr. Robinson's mis-placement was merely an inadvertent error made by a busy office employee with many duties, of which compiling the movie industry referral lists is only a very small part. She testified that she simply made "an honest mistake" when placing Mr. Robinson in Group III when she first compiled the groups and typed the lists in January 2019, either not realizing or overlooking the fact that his residence in Dayton was not within the definition of the local area under the policy. Ms. McFarland was aware that some drivers working under Local 100 contracts do go as far north as Dayton, which is closer to Cincinnati than many of the outlying counties in the tri-state area of Ohio, Kentucky and Indiana that *are* considered local under the policy. Indeed, as Mr. Metzger testified, Local 100 movie industry drivers had worked in Montgomery County on a production that filmed some scenes in downtown Dayton in the spring of 2017. McFarland Aff. ¶¶ 3, 7-8 & Exhibits B, C & D thereto; Metzger Aff. ¶ 5.

Ms. McFarland testified that she does not know Mr. Robinson or any of the individuals who were below him in Group III and had no reason to favor him or disfavor other applicants by putting him in a higher group. Ms. McFarland does know Mr. Bucalo, who served as Local 100's Secretary-Treasurer for six years. However, the inadvertent inclusion of Mr. Robinson in Group III did not affect Mr. Bucalo's placement. In each of the lists she prepared in 2019, Mr. Bucalo

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<sup>2</sup> The Complaint incorrectly cites the improper referral of drivers, plural, when there was only one error, and asserts that there was an incorrect placement in Group V, when Mr. Robinson actually should have been placed in Group VI, not Group V. The Complaint's reference to drivers in Groups I and II allegedly being bypassed apparently involves Mr. Bucalo's argument – which is the subject of a separate charge and which will be discussed further below – that retirees should have been moved up from Group VII into higher groups based on their years of experience and number of jobs in the industry.

was in Group VII, for retirees; had he been moved up out of that group based on his experience, as he has claimed should occur, he would have been in Group III but above Mr. Robinson. McFarland Aff. ¶ 9; Metzger Aff. ¶ 7.

Mr. Metzger as the Transportation Captain used the list with Mr. Robinson's erroneous placement in mid-August 2019 to make the referrals for "Wrong Turn," which was filmed in September. "Wrong Turn" was a medium-sized production that used only 12 drivers including the Captain. He did not realize when making the calls that Mr. Robinson was incorrectly placed on the Group III list, when he should have been in Group VI based on his residence. Both Ms. McFarland and Mr. Metzger learned of the error in the list only after the present ULP charge was filed. McFarland Aff. ¶¶ 7, 10; Metzger Aff. ¶ 8 & Exhibits B & C thereto.

Local 100 acknowledges that Mr. Robinson worked on "Wrong Turn" when other drivers in Group III who should have been above him if he were properly placed in Group VI did not work. None of those individuals in Group III filed a charge or complained to the Union, but Mr. Bucalo did file a charge. His charge contained a wide variety of allegations, including that "favored workers" and "a junior driver" (emphasis added) were referred while he was skipped over and that this was in retaliation for his alleged concerted activities. (It also alleged that Local 100 allowed non-union workers to perform certain work, an allegation that the Region dismissed.)

Mr. Bucalo has asserted in another case, No. 09-CB-232458, that he – and by extension, presumably, other drivers on the list of retirees – should be moved out of Group VII and up into higher groups based on their years of experience in the industry and number of jobs worked. That case is currently pending before the Board on exceptions to an Administrative Law Judge's Recommended Decision. However, as mentioned above, whether Mr. Bucalo remained in Group VII or was moved into Group III (based on his number of film productions and his less than two

years' experience in the industry), he would not have been referred to work on "Wrong Turn." Applying the lists without "dovetailing" the retirees into higher groups, if Mr. Robinson were not in Group III the Transportation Captain would have moved through the several other drivers in the list for that group and would not have come close to reaching those in Group VII. If Mr. Bucalo and the other retired drivers were moved up into the appropriate spots in higher groups based on their experience, three individuals would have placed in higher groups than Mr. Bucalo;<sup>3</sup> he still would not have been called for this work unless and until all three of them had declined it, which the Transportation Captain's testimony showed would be very unlikely. Metzger Aff. ¶¶ 7, 9-10 & Exhibit E thereto.

"Wrong Turn" was the last film production for which Local 100 provided exclusive hiring hall services. On August 28, 2019 – before filming on that project had begun but after the referral process was completed – the Union's Executive Board adopted a new movie industry policy that provides for non-exclusive referrals and for "producer's choice" in hiring, with no role for the Transportation Captain or any other Local 100 representative in the determination of who will work on what film or movie project. Instead, the Union provides information about all qualified drivers on an equal basis directly to each production company to make the hiring decisions itself. The Local Union office staff compiles applications and resumes for all qualified driver applicants and sends them electronically to any production company planning to film in the area, assembling them in alphabetical order and making no distinctions or groupings based on experience, local residence, retiree status or any other factor. The employer may select the drivers it wishes to hire

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<sup>3</sup> Two drivers in the retiree group, Ralph Metzger and James Downton, would have been in Group I based on their experience and a third, Dave Ferguson, would have been in Group II. Mr. Bucalo would have been in Group III. Metzger Aff. ¶ 10 & Exhibit E thereto, at 3.

from those who have been referred through Local 100 and also may hire outside applicants from any other source.

The Union through Ms. McFarland has followed this process for two planned movie productions since the effective date of the policy. McFarland Aff. ¶¶ 8, 10-12 & Exhibit F thereto; Metzger Aff. ¶ 11. Therefore, the error in a single driver's placement on the lists became moot even before the present charge was filed, and a similar mistake cannot be repeated in the future since the applicants are no longer classified into groups for purposes of referral.

### **Legal Standards and Argument**

The Union respectfully moves for summary judgment and dismissal of the Complaint in this case, as the uncontroverted evidence fails to support the allegations that Local 100 improperly referred Group V drivers ahead of others or, most significantly, that any errors in the referral process had the effect of “restraining and coercing employees in the exercise of their rights guaranteed in Section 7.” Complaint ¶ 6. To the contrary, the evidence shows no deliberate refusal to refer any individual and no knowing referral of any individual out of turn but establishes simply that a clerical error in the compilation of the referral lists resulted in the unintentionally incorrect replacement and referral of a single driver.

“The Board will grant motions for summary judgment if there is ‘no genuine issue as to any material fact’ and ‘the moving party is entitled to judgment as a matter of law.’ Security Walls, LLC, 361 NLRB No. 29, slip op. at 1 (2014) (*quoting Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985)).” Lhoist N. Am. of Tennessee, Inc., 362 NLRB 958, 958 (2015) (Member Miscimarra, concurring) (internal quotations omitted). The facts in this case are not controverted, so there is no genuine issue of material fact, and applying the applicable law to those facts establishes that the Respondent Local 100 is entitled to judgment as a matter of law.

This case must be considered in light of the legal standards relating both to exclusive hiring hall arrangements and to a union's duty of fair representation. As Member Emanuel recently explained:

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).

IATSE Local 8 (Elliott Lewis Convention Services, LLC), 369 NLRB No. 67, slip op. at 3 (April 29, 2020) (Member Emanuel, dissenting in part).

The Board has held that “any departure from the established procedures for an exclusive hiring hall that results in denial of employment to an applicant violates the duty of fair representation and Section 8(b)(1)(A) and (2), unless the union can demonstrate that the departure was pursuant to a valid union-security clause or was necessary to the union's effective performance of its representative function. . . . [S]uch departures encourage union membership by signaling the union's power to affect the livelihoods of all hiring hall users, and thus restrain and coerce applicants in the exercise of their Section 7 rights.” Plumbers Local 342 (Contra Costa Elec., Inc.) (“Contra Costa II”), 336 NLRB. 549, 550 (2001). Crucially, however, the Board also has “recognized that *inadvertent errors* in operating a hiring hall *do not* signal the union's power over referrals and thus do not encourage union membership or restrain and coerce applicants in violation of either the duty of fair representation or Section 8(b)(1)(A) and (2).” Id. (emphasis added)

Although the Complaint in this matter does not specifically allege that Local 100 breached its duty of fair representation to Mr. Bucalo or any other applicant for movie industry jobs, the case law in that area obviously is also relevant here. A union violates its duty of fair representation

when it operates an exclusive hiring hall in a manner that is arbitrary or unfair. Stage Employees Local 720 (4VW Audio Visual), 332 NLRB 1 (2000). The Board has acknowledged the Supreme Court’s guidance under “the Vaca v. Sipes standard, that the duty of fair representation is breached only by conduct that is ‘arbitrary, discriminatory, or in bad faith’” and that this standard “is not breached by conduct that constitutes ‘mere negligence.’” Plumbers Local 342 (Contra Costa Elec., Inc.) (“Contra Costa I”), 329 NLRB. 688, 689 (1999), *citing* Vaca v. Sipes, 386 U.S. 171 (1967). The Board in Contra Costa I further noted that The Vaca standard “applies to all union conduct, [including] to the operation of hiring halls.” Id., *citing* Air Line Pilots Ass’n v. O’Neill, 499 U.S. 65 (1991). In Contra Costa I, the Board in a 4-1 decision thus concluded that “‘mere negligence’ in the operation of an exclusive hiring hall does not give rise to a claim for breach of the duty of fair representation, even by an applicant who loses an employment opportunity as a result of the union’s mistake.” Id.

The Board noted prior decisions of the Board and the Supreme Court establishing that a union’s obligation under the duty of fair representation is “increased” in the context of an exclusive hiring hall but reasoned that this is because the union has taken on additional responsibilities in that realm – *not* because a stricter standard applies. Id. at 689-90. Contra Costa involved a single error in the hiring hall process, in which a union representative mistakenly believed he had called the charging party/applicant for work on a specific project but had not done so. The Board concluded that “honest, inadvertent mistakes, such as the Union’s in this case, do not, without more, constitute a breach of the duty.” Id. at 691.

As the Board explained, the cases in which it has found a union liable for a breach of the duty in the context of a failure to make a hiring hall referral have involved

deliberate, volitional departure from established procedure or rules or failure to apply objective standards for referrals. The Board has reasoned that in such cases, the unspoken message to all hiring hall users is that, despite what the rules say, the union – which controls their access to employment – can do as it pleases in awarding referrals, and that union considerations may therefore very well affect the ability of individuals to obtain favorable consideration in referrals. On that basis, the Board has concluded that such actions “encourage membership” in the Union within the meaning of the Act. *While this reasoning makes sense when applied to the volitional actions of union officials, it is unpersuasive when applied to simple mistakes.*

Id. (emphasis added). In defining what constitutes “arbitrary” conduct within the hiring hall context, the Board in a supplemental decision in Contra Costa after an appeal to and remand from the D.C. Circuit noted the following:

The descriptive terms used to describe breaches of the duty – “arbitrary,” “invidious,” “discriminatory,” “hostile,” “unreasonable,” “capricious,” “irrelevant or unfair considerations,” without “honesty of purpose” – indicate deliberate conduct that is intended to harm or disadvantage hiring hall applicants. They all imply that the union is either using its power to control referrals against the interests of individual applicants or classes of applicants, or that it may do so at any time, at its discretion.

There is nothing in those descriptions, however, to suggest that a union must operate an exclusive hiring hall mistake-free. An inadvertent failure to dispatch a hiring hall applicant in the proper order by definition is not deliberate and can hardly be described as “arbitrary,” “invidious,” “hostile,” or any of the other adjectives repeatedly used to characterize unfair representation. It carries no suggestion that the union has any thought or intention of acting to an applicant’s disadvantage. It may signal an error in judgment, but not favoritism or hostility.

Moreover, in operating hiring halls, unions perform a valuable service for employers as well as employees. If we were to find that unions have a duty to perform that service free of all errors, we might well discourage unions from undertaking that worthwhile role. As a matter of sound public policy, then, we are unwilling to infer that the duty of fair representation admits of no mistakes in the hiring hall context.

Plumbers Local 342 (Contra Costa Elec., Inc.) (“Contra Costa II”), 336 NLRB. 549, 552 (2001).

The Court of Appeals for the D.C. Circuit upheld this analysis and conclusion on review of Contra Costa II in Jacoby v. NLRB, 325 F.3d 301 (D.C. Cir. 2003). The court agreed that the

case law applying a heightened duty in hiring-hall cases “does not compel a finding that a single act of simple negligence results in a breach of the DFR.” Rather, the court concluded: “The Union in this case made a simple mistake, erring in good faith. The Board was well within the bounds of the law and sound judgment in concluding that a single error in the hiring hall setting did not breach the DFR.” Id. at 310.

In a case decided shortly after Contra Costa II, the Board found that a union did not violate the duty of fair representation when 1) one of its agents responded to an emergency call for workers early the following morning, which came in after hours and at a time when he needed to leave the office for an important appointment, by referring individuals who happened to be in the office rather than attempting to call the next person on the list, or 2) when the union agent mistakenly believed one worker had wished not to be referred to a particular job but to wait for another anticipated project. Plumbers Local 91 (Brock & Blevins), 336 NLRB 541 (2001). The Board concluded that the former situation, involving “cutting corners” in an exigent situation, was either excusable as an inadvertent mistake or, if a departure from the rules, was one that was “not ‘so far outside a wide range of reasonableness as to be irrational.’” Id. at 544, *quoting O’Neill*, 499 U.S. at 67. The latter situation was the result of simply “a good faith, albeit mistaken, belief” about the applicant’s desire to wait for a different job rather than be referred to the one in question, which similarly did not rise to a breach of the duty. Id. In another case involving various alleged defects in a union’s operation of hiring halls in different industries, the Board affirmed an ALJ’s conclusion that two instances of variance from a local union’s referral procedures – when a business agent had “simply made a mistake” by unknowingly using the wrong referral list and when the union accepted an employer’s request to refer an individual by name, ahead of others who should have been referred first, not knowing that the employee improperly had solicited the

by-name referral – were not intentional violations of the hiring hall rules and did not constitute violations of the duty of fair representation. Teamsters Local 631 (Vosburg Equipment), 340 NLRB 881, 885 (2003).

By contrast, the cases in which the Board has found a violation of the duty of fair representation in deviations from hiring hall procedures have involved conduct that was intentional or encompassed such widespread errors that they amounted to gross negligence. For example, in Southwest Regional Council of Carpenters (Perry Olsen Drywall), 358 NLRB 1 (2012), the Board adopted an ALJ's conclusion that a union had discriminatorily refused to allow an applicant to register on its hiring list because he had questioned whether it had been operating properly under the state's "right-to-work" law.

In a case involving mis-categorization of workers on a referral list, the Board concluded that as many as 200 improper referrals were made in a period of two years because the local union had permitted applicants to register in the highest group by signing the referral book themselves, using an "honor system" in which no union representative checked to determine if the workers in fact were qualified for that list. The Board concluded that this conduct, in which the union entirely failed to enforce its contractual procedures and rules, constituted gross negligence, which it defined as "conduct indicating disregard for established procedures." These actions amounted to "reckless disregard for established procedures in employees' interests, and thus constitute gross negligence under Contra Costa I or II." IBEW Local 48 (Oregon-Columbia Chapter of NECA), 324 NLRB 101, 108-09 (2004). The Board in Contra Costa I similarly had noted in a footnote, "if 'mistakes' are routinely made, or they typically disfavor nonmembers, dissidents or some other identifiable group, they may well not be found to be mistakes at all but, instead, arbitrary, discriminatory, or bad faith conduct in breach of the duty of fair representation." 329 NLRB. at 691 n.24.

As all of this case law makes clear, variances from the prescribed procedures that do not involve some demonstrable bad faith or animus and inadvertent mistakes that do not rise to the level of gross negligence do not violate the union's duty of fair representation or sections 8(b)(1)(A) and (2) of the Act. The present case does not involve any favoritism or discriminatory animus, no "reckless disregard for established procedures" and only a single, inadvertent misplacement of one applicant on the wrong list. It is essentially the same situation described by the D.C. Circuit in affirming the Board's ruling in Contra Costa II: "The Union in this case made a simple mistake, erring in good faith." Jacoby v. NLRB, 325 F.3d at 310. The court agreed with the Board that an "inadvertent error in operating a hiring hall" is insufficient to create liability in the union. Contra Costa II, 336 NLRB. at 550. This "single act of simple negligence" in the hiring hall setting, Jacoby, 325 F.3d at 310, does not constitute a breach of the duty of fair representation or coercive activity.

The uncontroverted facts presented in the affidavits show that a single applicant was placed on the wrong list through an inadvertent clerical error. The Local 100 staff member responsible for preparing the lists is a longtime Union administrative employee with a large number of duties; her responsibilities relating to the administration of the movie industry referrals including preparation of the lists represent only a very small part of the office work for a large and busy local union. Her affidavit testimony showed that the placement of Aaron Robinson in the wrong group in the referral lists was nothing more than a simple mistake; furthermore, the Transportation Captain testified that he used the lists in good faith without knowing of the error. Neither of them had any personal connection to Mr. Robinson and did not even know him at the time he was put in the wrong group, so there was no favoritism toward him, nor was there any intent to disfavor

any other applicant. Clearly, then, there was no deliberate intention to subvert the process to advantage or disadvantage any individual or to coercively encourage union membership in violation of Section 8(b)(1)(A). As the Board has held, the law does not require that “a union must operate an exclusive hiring hall mistake-free.” Contra Costa II, 336 NLRB. at 552. In this case, the single instance of a clerical error cannot be seen to be anything other than simple negligence that does not rise to the level of a breach of the duty of fair representation and or violate Section 8(b) in any way.

Conclusion

Based upon the foregoing facts, evidence and citations of authority, the Respondent Teamsters Local 100 respectfully submits that it is entitled to summary judgment and that the Complaint in this matter should be dismissed in its entirety.

Respectfully submitted,

**DOLL, JANSEN & FORD**

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