Operating Engineers and Participating Employees Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund for Hawaii and Operating Engineers Joint Apprenticeship Committee for Hawaii *and* Allen Souza *and* Wilfred K. Brown. Cases 37-CA-1663-1 and 37-CA-1663-2

December 15, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On April 20, 1982, Administrative Law Judge Harold A. Kennedy issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, to which Respondents filed a joint answering brief. Respondents filed joint cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge,[2] as modified herein.

We agree with the Administrative Law Judge that Respondents violated Section 8(a)(1) of the Act when Harold Lewis, Sr., told Wilfred K. Brown that he would soon "be on the outside looking in," an evident threat of discharge for complaining to, and cooperating with, Federal authorities in their investigation of Respondents. However, in so doing, we find it unnecessary to pass on the Administrative Law Judge's rationale that Brown was engaged in protected concerted activity because the Federal investigation "clearly inured to the benefit of employees of the bargaining unit." Rather, we find that Brown was engaged in protected concerted activity because he participated in the Federal investigation of alleged corruption in Respondents' affairs in concert with another employee, Allen Souza.

[1] Respondents and the General Counsel have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We will issue an order in lieu of that recommended by the Administrative Law Judge to define more specifically the particular conduct from which Respondents are required to cease and desist and to include a provision requiring Respondents to cease and desist from any "like or related" conduct.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Operating Engineers and Participating Employees Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund for Hawaii, Honolulu, Hawaii, and Operating Engineers Joint Apprenticeship Committee for Hawaii, Honolulu and Hilo, Hawaii, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Threatening employees with discharge for cooperating with Federal authorities in the investigation of intraunion affairs.

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

2. Take the following affirmative action:

(a) Post at their places of business in Honolulu and Hilo, Hawaii, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondents' representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

[3] In the event that 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."

APPENDIX

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

WE WILL NOT threaten our employees with discharge for cooperating with Federal authorities in the investigation of intraunion affairs.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS PRE-APPRENTICE, APPRENTICE AND JOURNEYMEN AFFIRMATIVE ACTION TRAINING FUND FOR HAWAII

OPERATING ENGINEERS JOINT APPRENTICESHIP COMMITTEE FOR HAWAII

DECISION[1]

Introduction

HAROLD A. KENNEDY, Administrative Law Judge: These proceedings[2] involve the June 18, 1980, discharges of Allen Souza and Wilfred K. Brown, two apprenticeship coordinators, allegedly because they engaged in either one or both of two types of conduct allegedly protected by the National Labor Relations Act (Act)—that is, according to the complaint, they:

(a) claimed that certain Hawaii employers were not in compliance with the apprenticeship ratio and the policing of the ratios was improper, and/or

(b) complained to and cooperated with the United States Department of Labor, Labor Management Services Administration, and the United States Department of Justice, Federal Bureau of Investigation, regarding alleged unlawful internal activities of Local Union No. 3 and the (Operating Engineers Joint Apprentices) Committee.[3]

The claims of Souza and Brown referred to in (a) above allegedly related to "terms and conditions of employment" of a collective-bargaining agreement, and the alleged unlawful internal activities referred to in (b) were said to have "an impact on the collective-bargaining unit." The complaint, which was issued by the General Counsel on August 26, 1980, also alleged that Brown was unlawfully threatened with discharge on or about June 12, 1980.

The hearing required 11 days and took place between April 14 and May 21, 1981, in Honolulu, Hawaii.

After carefully considering the briefs filed and the entire record, I am persuaded that Brown was unlawfully threatened with discharge but that neither he nor Souza was unlawfully discharged. I will therefore recommend entry of an order which enjoins repetition of the unlawful threat and dismisses the other allegations of the complaint.

Undisputed Matters

The pleadings establish that:

1. The charges filed in Cases 37-CA-1663-1 and 37-CA-1663-2 by Souza and Brown, respectively, were served on Respondents.[4]

2. Operating Engineers, Local Union No. 3 (referred to herein as Local 3 or as the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Contractors Labor Association (Association) is an organization composed of employers located in the State of Hawaii, engaged in the construction industry, and exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Local 3.

4. Local 3 and the Association were signatories to a collective-bargaining agreement covering terms and conditions of employment of certain employees for the period September 5, 1977-September 1, 1980.

The employer-members of the Association have offices and places of business in Honolulu, Hawaii, and have been engaged as contractors in the building and construction industry, constructing residential, commercial, industrial, and office facilities.

At the outset of the hearing it was stipulated that the correct names of Respondents are (a) Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund for Hawaii, referred to as the Training Fund, the Trust Fund, or the Fund, and (b) Operating Engineers Joint Apprenticeship Committee for Hawaii, referred to as "the Committee" or JAC.[5]

The Trust Fund has six trustees, three representing employers—Chairman Ed Hulihee, Clint Hardesty, and Joseph Akiona—and three representing the Union—Harold Lewis, Sr., cochairman, Dale Marr, and Harold Huston. Some of these trustees also serve as members of the JAC. Ed Hulihee is a JAC member and also JAC chairman. The other two employer JAC members are Joseph Akiona and Gilbert Ho. Clint Hardesty and Stan Osada are, respectively, first and second employer alternate members. Union JAC members are Harold Lewis, Sr., cochairman, Wallace Lean, secretary, and Harold Lewis, Jr. The first and second union alternate members are, respectively, Willie Crozier and Rick Shuff. All of

[1] As explained *infra*, Respondents were initially incorrectly identified in these proceedings.

[2] Messrs. Davis and Miller initially entered a joint appearance for Respondents. At the first day of the hearing, counsel for the Charging Parties raised a question of the propriety of representation by Respondents' counsel. On the following day the appearances for Respondents were amended (to facilitate cross-examination) so Davis would be representing the Operating Engineers and Participating Employers Pre-Apprentice and Journeymen Affirmative Action Training Fund for Hawaii (Trust Fund or Fund) and Miller would be representing Operating Engineers Joint Apprenticeship Committee for Hawaii (Committee or JAC).

[3] The words, "and the United States Department of Justice, Federal Bureau of Investigation," were inserted in the pleadings by amendment at the hearing.

[4] Souza and Brown filed their original charges on June 19. The charges were amended on August 20.

[5] Counsel for Respondents explained at the outset of the hearing, with agreement of the attorney for the General Counsel, that the first named "Respondent," Joint Board of Trustees Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO and Participating Employers of Hawaii, should be stricken as there is no joint board "*per se*." Also, while there are separate Operating Engineers Joint Committees for (northern) California and (northern) Nevada and Utah, such organizations are not involved in these proceedings. Thus, use of the terms "JAC" or "the Committee" refers only to JAC for Hawaii.

these persons reside in Hawaii except for Marr and Huston.

It was stipulated that James P. Atkinson is the administrator of JAC and "agent" and "supervisor" of Respondents (G.C. Exh. 1-U). There is no dispute about th fact that Harold Lewis, Sr., is, and has been at all times relevant, a member of the JAC, a Fund trustee, and a cochairman of each entity. Respondents stipulated that (at times relevant) he was an "agent," that he had the authority and powers of a "member," and that he possessed "somewhat more authority" as a trustee because he is a cochairman (G.C. Exh. 1-U).[6]

Other stipulations reached during the hearing included these:

1. Respondents Training Fund and JAC "for the purposes of this hearing" may be considered "Joint employers."[7]

2. The parties stipulated that the operations of the Training Fund and JAC are essentially as pleaded in subparagraphs (b) and (c) of paragraph 6 of the complaint. It was agreed that their operations should be described as follows (G.C. Exh. 1-U):

(a) At all times material herein, the Training Fund, an organization composed of trustees from both Local 3 and employer-members of the Association, established pursuant to the laws of the United States and the State of Hawaii, with an office and place of business located at 1432 Middle Street, Honolulu, Hawaii 96819, is engaged in providing a journeymen and apprentice training program for Local 3, pursuant to a trust agreement funding provided for pursuant to the collective-bargaining agreement described above in paragraph 4.

(b) At all times material herein, the Committee, an organization composed of members of both Local 3 and Participating Employers from Hawaii, including employer-members of the Association, established pursuant to the laws of the United States and Hawaii, with offices and places of business in Honolulu and Hilo, Hawaii, is engaged in the maintenance and enforcement of the journeymen and apprentice training program for Local 3, pursuant to the trust agreement and standards.

3. During the 12-month period ending December 31, 1980, the Trust Fund, in the course and conduct of its operations, received employer contributions in the amount of $259,264 from various employers of Hawaii. Additional moneys in the form of interest were also received ($172,060) so that a total amount of $431,764 was collected by the Fund. Further, for the same period there was "a combined annual direct and indirect outflow for the purchase of goods and services outside the State of Hawaii in excess of $50,000." During the 12-month period ending December 31, 1980, the JAC received in the course and conduct of its operations revenues in the amount of $403,889 (G.C. Exh. 1-U).[8]

Respondents admit, as alleged in paragraph 10(a) of the complaint, that Souza and Brown had, since on or about May 1, 1978, claimed that certain employers were not in compliance with the apprentice ratios provided for in the collective-bargaining agreement and that the policing of the ratios was improper.[9]

Section 7.11.04 of the 1977-80 collective-bargaining agreement (G.C. Exh. 3) defines manning apprentice ratios as follows:

> Where the Individual Employer employs more than three (3) but less than seven (7) Journeyman Operating Engineers, he shall employ at least one (1) Registered Apprentice, but not more than one (1). Where the Individual Employer employs seven (7) up to and including fourteen (14) Journeyman Operating Engineers, he shall employ at least two (2) Registered Apprentices, but not more than two (2); and, thereafter, for each additional twenty (20) Journeyman Operating Engineers that he employs, he shall employ at least one (1) additional Registered Apprentice, but not more than one (1). The Apprentice filling the classification of an Assistant to Engineer (oiler) shall not be counted in the above ratio.

It is undisputed that the proviso requires (only one apprentice when there are 4 to 6 journeymen, 2 apprentices when there are 7 to 33 journeymen, 3 apprentices when there are 34 to 53 journeymen," "and so forth" (Resps. br., p. 51). Section 7.11.02 provides that the education, training, and disciplining of registered apprentices is to be governed by "appropriate Joint Apprenticeship Committee and Standards." A copy of the standards of the

[6] Lewis, Sr., was in charge of Hawaii for Local 3 from 1958 until April 1980 when Dale Marr, the Union's chief executive, relieved him of his "day-to-day duties" for the Union. He retains the title of financial secretary and remains in charge of the "political scene" there. Since April 1980 Wallace Lean, district representative of Local 3, has been the top official of the Union in Hawaii.

[7] As has been noted, counsel for the two Employers entered separate appearances for the "two entities" after start of the hearing, but the stipulation that they are to be considered joint employers was never revoked.

[8] Dale Marr, business manager and chief executive of Operating Engineers Local 3, explained that the Fund is responsible for the "financial end" of the apprentice training program and that the JAC is responsible for the training itself. Joseph Akiona, a member of the JAC and the Fund, testified in a similar way and stated that the Fund's concern for economic or money matters included responsibility for "staffing of the J.A.C." James Atkinson, administrator of the JAC (for northern California, northern Nevada, and Utah, as well as for Hawaii) testified that there is a trust agreement which "provides that the Board of Trustees has full responsibility for administering the funds in behalf of training of pre-apprentices, apprentices, and journeymen, and also recruiting people and investigating the need for additional people in the industry." He said the trustees delegated authority to the JAC to actually oversee the program and establish standards and set policy regarding the training. Atkinson stated that the Training Fund's address in Hawaii is the same as the JAC's, although the fund manager, C. W. Sweeny, is located in San Francisco. He said payroll moneys are deposited "weekly from the First Hawaiian Bank to the Bank of America in San Francisco, and then the payroll is cut from that" by Sweeny. Former JAC training counselor Allen Souza testified that he thought the JAC and Trust Fund were the same. He said his checks were drawn by the Fund on a San Francisco bank.

[9] Respondents argue that Souza and Brown improperly sought to police such ratios, a function they maintain belongs to the Union. Brown and Souza contended during their testimony that Harold Lewis, Sr., had told them on some occasions to police such ratios and on others not to do so.

Joint Apprenticeship Program was received in evidence as General Counsel's Exhibit 6.[10]

The collective-bargaining agreement requires that each employer pay moneys to the Fund on the basis of hours worked by its employees (secs. 12.05.00 and 12.07.00).

The Evidence

Twenty-nine witnesses testified. Six of them—Allen Souza, Wilfred Brown, Nelson Umiamaka, Jean Yee, William Lindsey,[11] and Jerold Kringel—were recalled and testified more than once.

Among the significant dates and events referred to during the hearing include the following (in chronological order):

1. January 17, 1978—JAC Assistant Administrator Umiamaka recommends termination of one Oahu training coordinator based on "the continued decline" of apprentices, "a decreased . . . workload" and an "Evaluation Report" of coordinators Brown and Souza (Resps. Exh 3).

2. April 14, 1978—Notice terminating Souza, based on a "reduction in force," is prepared and signed by Umiamaka (G.C. Exh. 14) but never put into effect.[12]

3. June-July 1978—JAC votes in June to terminate Souza as a reduction in force, and he is officially advised of that fact on or about July 5, 1978. Souza goes immediately to the FBI with information about Harold Lewis, Sr. Brown joins Souza and meets with Federal authorities concerning Lewis, Sr.'s conduct.[13]

4. August-September 1978—Lewis, Sr., calls special meeting of JAC on or about August 30, and Souza is rehired. Lewis, Sr., expresses concern about a Federal investigation.[14]

5. October 20, 1978—Souza and Brown testify before the grand jury.[15]

6. June-August-September 1979—On June 21 Training Fund trustees direct JAC Administrator James Atkinson and Assistant Administrator Nelson Umiamaka to make a JAC staffing study and report back. The minutes of the Fund meeting (Resp. Exh. 4) indicate personnel reductions and upgrading of Education Director Jerold Kringel (who had been employed in April 1978) should be considered as possible recommendations. Thereafter Atkinson, whose office is located in California, collects data from JAC staffs in California, Nevada, and Utah, as well as the JAC staff in Hawaii. The report (Resps. Exh. 5) is completed and mailed to Fund trustees in late August or early September by Atkinson. The report includes a recommendation (written by Atkinson and concurred in by Umiamaka) that two Hawaii training coordinators should be terminated, along with this suggestion: "It would seem more logical to terminate the two Coordinators on Oahu, and to utillze the Audio Visual Coordinator to service apprentices in that area." At the next Fund meeting (a "four-state meeting" held at Rancho Murietta in California on September 27, (Resps. Exh. 6) no action is taken on the report because of the prospect of "a big influx" apprentices.[16]

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[10] Souza identified G.C. Exh. 7, "Rules, Regulations, and Procedures Application to Operating Engineer Apprentices [and Applicants]," as applying only to journeymen.

[11] Lindsey's testimony was quite brief each time.

[12] Souza said he discussed the notice in the JAC office with Harold Lewis, Sr., who told him not to worry about it and added, "As long as I am here you will have a job." Umiamaka testified that he prepared the notice at Lewis, Sr.'s direction. Umiamaka said he did not show the notice to Souza, did not discuss it with him, and that it was never presented to the Committee.

[13] Umiamaka testified that the JAC members took the action terminating Souza unanimously on motions of management trustees. Souza said he learned of his termination from Wallace Lean, JAC secretary and Local 3 official, on or about July 3 and that he (Souza) was told officially of the action by Umiamaka when he reported to work on July 5. Souza said he thought he had been railroaded and went immediately to the FBI in the Federal building. He first spoke with Ed Minor, then with Mike Sterrett (a Justice Department employee who at that time headed up the strike force in Hawaii) and Dale Bennett, at that time of the Labor Management Services Administration of the Department of Labor in Hawaii. Souza said he, Brown, and Umiamaka met with Sterrett, Bennett, and Minor "a couple of days" after he first went to the FBI. Brown said he, Souza, Umiamaka, and also others had conferred with Federal authorities.

[14] Umiamaka testified he could not recommend rehiring of Souza with only "about 29 apprentices on board at that time." Umiamaka stated that there was talk of an increased workload, and Lewis, Sr., expressed the view that Souza's termination was unfair as Souza was on vacation at the time. Lewis, Sr., wanted an employer member to make the motion to rehire, but ultimately Lewis, Sr., made the motion himself, commenting, "Ain't anybody here got any balls?" Wallace Lean, who attended the meeting (and abstained from voting), testified that Lewis, Sr., had stated, "Well, f— you guys. The heat's on me. I'll make the motion."

Umiamaka said he called James Atkinson, administrator of the Joint Committee of California, north Nevada, Utah, and Hawaii, and advised him of the JAC decision to rehire Souza. Atkinson indicated in response that he would notify Local 3's head official, Dale Marr, of the JAC's action. Shortly thereafter, in September, according to Umiamaka, Lewis, Sr., told Umiamaka that he should only tell him or Hulihee "about what we do in Hawaii." In the same conversation Lewis, Sr., told Umiamaka that "I think Allen Souza is putting the finger on me in this FBI investigation and that Wally Lean is hooked up with it."

Souza testified that Federal authorities warned him of a death threat in July and that in August he was told by Wallace Lean that Lewis, Sr., wanted to see him. Souza said he did so on August 28, after being "wired" by the FBI, and was told by Lewis, Sr., that the contractors had been responsible for the termination and that it had occurred because he (Lewis, Sr.) had been out of town. Souza said Lewis, Sr., told him to go back to work and not worry about it. Lewis, Sr., said, according to Souza, "I am the Financial Secretary and as long as I am the Co-Chairman of the Joint Apprenticeship Committee, I run the f—ing committee, I am the f—ing J.A.C."

[15] Souza testified that after returning to work on September 5 and before appearing before the grand jury Lewis, Sr., would speak to him about the investigation. He said Lewis, Sr., would ask him to admit that he had gone to "the Feds" and talk loyalty. Souza said he would deny knowing about any investigation and assured Lewis, Sr., that he was loyal to him.

Souza said he met with an attorney for the Operating Engineers the day before he appeared before the grand jury and was told "to take the Fifth Amendment" and "protect the union and Mr. Lewis."

Brown testified that he met with attorneys Au and Miller, at the request of Lewis, Sr. (who had previously asked him to "take the rap" for Lewis, Sr., involving the pickup of liquor and other items from contractors), and was told to plead the fifth amendment.

[16] Umiamaka testified that between September 1978 and June 1979 the number of apprentices did not increase "the way we anticipated" and that he discussed the matter of overstaffing with the administrator and Chairman Hulihee during such period. Hulihee brought up the subject of overstaffing at the June 21 Fund meeting and suggested a consultant make a study, but Dale Marr opposed any "outside guy" going over the records. Marr also mentioned the fiduciary responsibility imposed on trustees by recently enacted ERISA laws and cautioned the trustees that if the study were made "we've got to follow it."

Marr indicated in his testimony that he was angry with Atkinson for mailing the report out, commenting, "You don't discharge people lightly." Marr said Lewis, Sr., approached him at the September Rancho Murietta Fund meeting and asked him to speak to the employer repre-

Continued

7. December 1979–April 1980—The apprenticeship program is opened up. Fund trustees meet in December 1979 and in April 1980, but no action is taken on the staffing study report. Lewis, Sr., tells Souza in February that (strike force head) Mike Sterrett is being transferred and that he (Lewis, Sr.) has a "clean bill of health." In April Lewis, Sr., while retaining title as financial secretary), loses authority to act in day-to-day union affairs. Wallace Lean, district representative for Local 3 (and JAC secretary), is given full authority by Dale Marr to direct union affairs in Hawaii. Souza and Brown are invited to the April JAC meeting (after being excluded from JAC meetings for a period of approximately a year) but then are excluded at the beginning of the meeting because a heated argument ensues with Lewis, Sr., over the policing and depletion of the apprentice manning ratio. Umiamaka thereafter tells Souza and Brown that Lewis, Sr., has stated he is going to get rid of the "two assholes."[17]

8. June 1980—On June 12 Lewis tells Brown in the parking lot, "It won't be long before you'll be on the outside looking in." The Fund trustees meet in San Francisco on Monday, June 16, and decided to terminate two Hawaii training coordinators (Resps. Exh. 7). Souza and Brown are advised in identical letters (G.C. Exh. 15 and G.C. Exh. 24) dated June 18 that they are being terminated as a result of a reduction in force.[18]

Allen Souza testified that he was employed as business representative for Local 3 beginning around 1974 and later became a training coordinator for the JAC of Hawaii in December 1975.[19]

Souza explained that his work, and the work of two other training coordinators, Wilfred Brown and Jerry Nago, was divided up according to how apprentices were assigned to various employers. Souza and Brown were assigned to Oahu, and Nago covered Hawaii, Maui, and Molokai.

Souza and Brown worked in a first floor office located at 1432 Middle Street in Honolulu. (Prior to April 1978 both the JAC and the Union had offices at 2305 South Beretania Street in Honolulu.)[20] Their immediate supervisor, Assistant Administrator Nelson Umiamaka, and an "office girl," Jean Yee, also worked in the same office. Harold Lewis, Sr., maintained his office in the office of Local 3, located in the same building. Wallace Lean, district representatives of Local 3, and the Union's dispatcher, William Lindsey, also have their offices in the building.

Souza explained his concept of the duties as training coordinator as follows:

> My job was to police the training of the apprentice, to ensure that he had the proper training from various employers, to see that he has or that he attend his supplemental related training insofar as classroom training . . . .
>
> There were times . . . that it was our job to police the ratio and there were times that it was not our job, it was the business representative's job to police the ratio insofar as ensuring that the employer's signatory to the agreement would have the required amount of apprentices that should be assigned to that employer.

Souza said it was Lewis, Sr., who told training coordinators to enforce the apprentice manning ratio. But, according to Souza, there were other occasions when Lewis, Sr., told him not to police the ratios.[21]

Souza identified a number of documents which he and Brown used, or were made aware of, while employed as training coordinators for the JAC, including the following: Operating Engineers training coordinators job description (G.C. Exh. 4); house rules for all training coor-

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sentatives (with whom Lewis, Sr., said he was having "trouble" at the time) and persuade them "to hold off" action on the staffing report as the apprentice program was to reopen. Marr said he then did speak to the employer representatives (Hulihee, Akiona, and Hardesty), and it was informally agreed that the trustees should "wait to see" what developed.

[17] Umiamaka testified that a new statute mandated new selection procedures, making the old applicant obsolete. He testified:

> We started our applications in September and it took us until December to conduct all of the interviews. We finally started indenturing apprentices in January of 1980.

The need for apprentices did not materialize to the extent expected, however, he said. About 207 applications were filed initially, he said; 80 failed to make the "grade level," and about 170 were placed on an apprentice waiting list. According to Umiamaka, around 40 were indentured (registered) into the apprentice program on Oahu, between January and June, and in June there were 53 apprentices on that island.

Souza said he and Umiamaka met with Lewis, Sr., in the latter's office in February to discuss the Federal investigation. Before being excused, Souza said Lewis, Sr., stated that he "had friends in Washington" who "got rid of Mike Sterrett" by transferring him and that he had been given a "clean bill of health from the FBI."

Marr indicated that he had stuck his neck out in going along with the request of Lewis, Sr., to delay action on the staffing report and that he pressed Atkinson and Lewis, Sr., in the fall of 1979 about the results of reopening the apprenticeship program. Marr said he told Lewis, Sr., in April 1980, when in Honolulu to attend the International convention and graduation of apprentices, that the staffing report must be on the agenda of the next meeting "whether you like it, or I like it."

[18] Brown testified to the June 12 parking lot incident, and Souza stated he overheard Lewis, Sr., make such statement. Lewis, Sr., denied, unpersuasively, making a threat to terminate Brown.

Employer Trustee Joseph Akiona testified that at the June Fund meeting Marr moved for approval of the staffing study recommendation that two coordinators be terminated and that he had seconded the motion. Lewis, Sr., "didn't say a word," according to Akiona, and the motion passed unanimously. It was left to the administrator and the assistant administrator to decide who should be let go.

Marr said there was little discussion of the matter at the Fund meeting as "the sheer numbers" dictated the decision; the Trust "ordered the administrator to make the necessary termination and to inform the people involved."

Atkinson said he carried out the Fund's direction, choosing to terminate Brown and Souza by going to the Honolulu office and personally delivering their termination letters to them on Wednesday, June 18.

[19] Souza's rebuttal testimony is summarized, *infra*. Both Wilfred Brown, who also had been a business representative for Local 3 before becoming a training coordinator, and Souza regarded their transfers to JAC training coordinator positions to be "demotions." Brown said he was reassigned in order to make room for a union position for Harold Lewis, Jr.

[20] Souza was not sure when the JAC and the Union moved their offices. Harold Lewis, Jr., a knowledgeable witness, indicated the move took place around April 1978.

[21] Souza agreed on cross-examination that he was sometimes told during 1976 and 1977 that it was not the job of coordinator to police the manning ratio, but he added:

> [T]he orders were changed daily. One day it's don't police the ratio and the next day it's police the ratio . . . .

dinators (G.C. Exh. 5); an "Assignment of Companies" memorandum dated June 2, 1980, showing names of contractors, along with the names of apprentices, assigned for the month of June 1980 (G.C. Exh. 8); General Counsel's Exhibit 9, a listing of 25 apprentices (and 24 employers) assigned to Souza and Brown; sample weekly activity report (G.C. Exh. 10); sample coordinator's monthly report (G.C. Exh. 11);[22] sample (now obsolete) monthly work record (G.C. Exh. 12); and sample apprentice's record of hours designed to show amount of training in various areas (G.C. Exh. 13).

Souza also identified General Counsel's Exhibit 16, a document he said he prepared to show that manning ratios were not being enforced. The exhibit shows 44 employers and in the last column, the number of apprentices each employer was "short," according to Souza. The accuracy of the exhibit, which indicates 85 unfilled apprentice openings, was vigorously challenged by Respondents, and even Souza, when he appeared as a rebuttal witness, conceded that he had not prepared the exhibit entirely by himself and that it could well contain errors.[23]

Souza explained the procedure for an individual to become an indentured (registered) apprentice: The person files an application in the state employment office and, after completing qualifying tests, is brought into the apprenticeship program on a "first come, first serve" basis as training opportunities become available. The apprentice is given orientation (being advised of standards, preparation of timesheets, how dispatched, etc.) before actual training begins. An apprentice must become a member of the Operating Engineers. Upon completion of training, apprentices become journeymen (construction equipment operators, heavy-duty repairmen-welders, etc., depending upon training) and subject thereafter only to the jurisdiction of the Union's business representative.

According to Souza, apprentices are rotated among different employers so they can receive the required training in various categories—grade setting, use of the bulldozer, grader, etc. Souza said he would regularly check on apprentices assigned to him, but on occasion he and Brown would check each other's apprentices in order to avoid "crossing paths." Souza said he visited approximately five apprentices each day to see that apprentices were receiving the proper training. Souza said he worked 7 a.m. to 5 p.m., Monday through Friday, and additional hours on some Monday nights and on some Saturdays when apprentices attended classes at a community college.

Souza testified that Lewis, Sr., had stated many times that he (Lewis) would be the one to decide about placing an apprentice or opening up the apprenticeship program. After stating that Lewis, Sr., "don't give you instruction, Mr. Lewis tells you," Souza recalled an incident involving Larry Ching of Hawaiian Construction. Souza thought the company offered training opportunities and told Lewis, Sr., of that fact, but the Employer disagreed when Souza approached him. Souza went back to Lewis, Sr., and had a discussion which he described as follows:

> Mr. Lewis said, "Hey, back the f—k off. You give him one. And I told him he going get one, so he just get one. Never mind about the second one. Get the f— out of there."[24]

According to Souza, Lewis, Sr., directed him and others to solicit quantities of alcoholic and other beverages beginning in 1975 when the union hall was still located at 2305 South Beretonia Street. Said Souza:

> We would get booze, go see the contractors for booze, soft drinks—whatever my assignment would be. Maybe I would be assigned to pick up booze and beer and soft drinks. So I would go to different contractors and tell the contractors and tell the contractor that, "Mr. Lewis, Sr., has a party coming up, and can you donate some booze to his party."

Souza continued:

> [A]fter picking up all this booze, we would now take it up to Harold's house, take 'em downstairs. And after a day of this party, we would go up to this, that function over there, and we would bartend, you know, for Harold.

Souza said, "We would do it only once a year" sometime in the summer. He said the same thing occurred in 1976 and 1977, but he said he was not involved in 1978.

Souza testified that he discussed a termination letter (G.C. Exh. 14) dated April 14, 1978, on that date with Lewis, Sr., in the JAC office after receiving it from Umiamaka.[25] Lewis, Sr., told Souza, Souza stated, that Umiamaka had recommended the termination because Souza had failed to attend a meeting. Lewis, Sr., canceled the dismissal saying:

> Don't worry about it. Go back to work. And as long as I am here, you will have a job. . . .

Soon thereafter, around July 3, 1978, shortly after his return from the "Mainland," Souza saw District Representative "Wally" Lean who told him, "Harold and the committee met and terminated you." Souza said, he reported to work on July 5, 1978, and was told of the ter-

[22] Souza and Brown were told commencing around May 1979 to prepare monthly reports. Before that time they had appeared at JAC meetings and made oral reports.

[23] Souza said he compiled a list of signatory companies and then calculated the number of apprentices, using printouts of health and welfare reports. On rebuttal, however, he said Jean Yee had helped him prepare the exhibit (telephoning contractors and typing it) and that he had not relied entirely on such printouts to ascertain the number of journeymen.

Respondent offered a similar document, Resps. Exh. 17, to show that the shortage was 44 apprentices, not 85. Harold Lewis, Jr., who testified about both G.C. Exh. 16 and Resp. Exh. 17, indicated that G.C. Exh. 16 was full of errors and stated, "I don't believe Allen Souza prepared this report because [I] think Allen Souza would have had a better understanding of those manning provisions under the apprenticeship ratio."

[24] Souza also referred to incidents involving Lewis, Sr., and other employers. According to Souza, Lewis, Sr., one day came to the JAC office and told Souza that he was being deputized to go to Sand Island and shut down any "f—ing equipment" that Kuwasaki might be operating.

[25] Umiamaka said he had prepared the letter at the direction of Lewis, Sr., but that he (Umiamaka) never showed it to Souza or discussed it with Souza.

mination by Umiamaka. "And thereafter," on the same day, Souza said, "I met with Mr. Ed Minor from the FBI" in the Honolulu Federal building and signed a statement. Souza said he thought he had been railroaded, and he was "going turn it around and somebody going get railroaded." Souza stated that he "laid out the documents . . . and showed things that was happening." He said he also met with Mike Sterrett of the Justice Department and Dale Bennett of the "Labor Management Agency." Souza said he furnished information "about the booze we picked up" and the false travel claims that Lewis and another person had allegedly filed.

According to Souza, Brown and Umiamaka joined him in a meeting with Minor, Sterrett, and Bennett "a couple of days later." Umiamaka and Brown also produced documents and talked with the Federal authorities. Souza said he continued to meet with such authorities at various places in Honolulu. When Sterrett and Minor received new assignments, around 1980 he thought, Souza met with FBI agents named Ray Hamilton and Bob Henderson "or something like that." Sometimes Souza would be alone at these meetings, and at other times Brown or Umiamaka would also be there.

Souza related that around late July 1978 he was stopped by two FBI agents on the street and told that "a contract was put on me or [someone] was trying to." In the following month, in August, according to Souza, Souza called Lewis, Sr., from the FBI office (after Wallace Lean had told him that Lewis, Sr., was wanting to see him) and made an appointment to see Lewis, Sr., that afternoon. Souza said he kept the appointment, after the FBI "wired me." When he met with Lewis, according to Souza, Lewis denied any responsibility for Souza's terminations:

> He said, "The f—ing contractors did all this. I wasn't in town; I was in Guam. And as long as I am the Financial Secretary and as long as I am the Co-Chairman of the Joint Apprenticeship Committee, I run the f—ing committee, I am the f—ing J.A.C. You go back to work. You don't worry about it . . . .[26]

Souza said he returned to work on September 5. Thereafter, Souza said he and Lewis, Sr., would often talk about the pending investigation. Lewis, Sr., would assure Souza of always having a job but then accuse him of being disloyal. Souza said Lewis, Sr., claimed the "Feds" were friends of his and that he knew Souza was an informer.

Souza was subpoenaed to appear before the grand jury on October 20, 1978. He said he was told by Lewis to speak to union counsel Miller prior to the appearance and that he did so. Souza initially testified about his meeting with Miller as follows:

> And Mr. Miller had asked me to take the Fifth Amendment to anything that the government would ask me. Tickets, booze, whatever they asked—to go in there and take the Fifth Amendment: "We got to protect the union and Mr. Lewis."

Souza said Miller also told him:

> [H]e said, "Listen, we heard you was . . . the guy who went to the FBI, but I going tell you I don't believe it." And I never said anything. So he said, "So don't worry about it. I go be outside there. If you need me, come outside, and say that. You have that right."[27]

Souza testified on October 20, 1978, before the grand jury. He said he did not plead the fifth amendment but told Lewis, Sr., afterwards that he had. Souza indicated he also explained that he could be recalled (by Sterrett) in which event he would have to return with an attorney. "Mr. Lewis then told me," Souza said:

> Well, you going to have to get yourself your own attorney, because Mr. Miller is here only to protect the union and me because I am a constitutional officer. Now this, you are going to have to save your own ass, because this puts me in the clear.

A week later, according to Souza, he said he saw Lewis, Sr., and Amy Fujimoto, the Union's office manager, in the union parking lot. After Fujimoto had gone to Lewis, Sr.'s car, Lewis told Souza:

> The last time your f—ing termination was f—d up, but the next one won't.

Souza testified that he and Brown had attended JAC meetings and made oral reports on their work prior to April 1979. Lewis, Sr., would harass Souza and Brown at such meetings about their reports and what they had been doing, Souza said. "And," added Souza, "if we would bring up the subject of the ratio, he would say, 'Its not your f—ing job. Stay out of it.'" In April 1979, according to Souza, Lewis, Sr., directed Souza and Brown to submit written reports and forbade their appearance at JAC meetings. Jerry Nago was permitted to continue in attendance at the JAC meetings, however.

Souza said he met with Lewis, Sr., and Umiamaka in February 1980. After the usual routine—"what's going on," "I will always have a job," etc.—Lewis, Sr., observed that he had not been indicted and claimed to have been given a clean bill of health. Souza said Lewis added

[26] Souza, whose testimony was not always consistent, testified on cross-examination, as stated in a Board affidavit, that Federal authorities had told him, "Mr. Lewis was trying to get a contract out on you." The affidavit also states that Walter Kapau of the Carpenters had told Lewis, Sr., that Souza had gone to the Federal Government.

[27] Souza agreed on cross-examination that attorney Miller had told him that picking up liquor for Lewis, Sr., might be unlawful, but on redirect he said he did not think Miller had done so.

It was stipulated that if called to the stand JAC counsel Miller would testify that he was in Hawaii between October 17 and 21, 1978; that on or about October 19 he advised Souza that picking up of liquor from contractors might be unlawful and suggested Souza invoke the fifth amendment if questioned on the subject before the grand jury; that Miller explained to Souza the proceedings and "what taking the Fifth meant," and that Miller would be waiting outside the room if Souza had any questions; also that Miller and attorney Ron Au met with Brown on or about October 19 and that it was suggested to Brown that the fifth amendment be invoked with respect to picking up liquor from contractors; and, finally, that Miller told both Souza and Brown that either could be represented by his own attorney and that Miller did not tell Souza that he or anyone else knew Souza had gone to the FBI.

that he had "friends in Washington and that they got rid of Mike Sterrett."[28]

Souza testified he and Brown were told to attend the April 28, 1980, JAC meeting after being barred from such meetings for about a year. But before the meeting got underway however, he and Brown "got into a debate with Mr. Lewis . . . so far as policing or enforcing the ratio." Lewis, Sr., then accused Lean of "f—ing everything up," and then Brown pointed the finger at Lewis:

> You the guy went f—ing everything up. Because every time we went try and enforce, you tell us guys back off, get the f—ing out of there. And everytime we try to put guys into different period apprentices, you would stop us. "No more apprentices going out."

"And then they kicked us out of the meeting," Souza said. Souza said they were told by Umiamaka after the JAC meeting:

> Hal said he don't want you two f—ing assholes back there anymore. And it won't be long that he is going to get rid of us, as Harold put it. Going get rid of those two assholes.

Souza said he recalled overhearing a conversation between Lewis, Sr., and Brown in the union parking lot on June 12. "The only part I heard Mr. Lewis say to Mr. Brown was, 'It won't be long before you be on the outside looking in'"—a comment Souza said he had heard Lewis, Sr., make many times before.

Souza said Administrator Atkinson personally delivered the termination letter (G.C. Exh. 15) to him on Wednesday, June 18, but that he had heard earlier on Monday, June 16, by telephone from Umiamaka that the trustees had voted the terminations effective June 30. Umiamaka expressed the thought at that time, according to Souza, that "this was coming from Harold."

Souza indicated on cross-examination that Umiamaka had told him he was doing "a good job" and denied that Umiamaka had criticized his work as a training coordinator. He acknowledged having outside business interests while employed at the JAC, however, including the operation of a security business and the sale of jewelry and pet insurance. He said he thought Lewis, Sr., "gave us a vote of confidence for doing such a good job" in JAC minutes, but he acknowledged that Lewis, Sr., as well as JAC members Hulihee and Akiona, had criticized his work at JAC meetings. Souza stated that, at one JAC meeting held ih Hilo (in 1978 he thought), he and Brown were "play[ed] one against the other." Souza said he and Brown conferred later and decided not to get into "any more scraps" with one another.

Dale Bennett, who identified himself as an officer in charge of the subregional office of the Federal Labor Relations Authority, testified that on an earlier occasion, when he was the area administrator for the Labor Management Services Administration of the Department of Labor, he had prepared G.C. Exh. 17, a memorandum which states that that department is conducting an "ongoing investigation of not only the Apprenticeship and Training Fund for Hawaii but also the Pension Trust Fund for the Operating Engineers Local 3 to ascertain whether there had been any violation of the 'Employee Retirement Income Security Act of 1975'" as a result of information submitted by Souza and Brown. Bennett explained that Souza and Brown began supplying information to the department on July 7, 1978—not in October as the memorandum states. Bennett also identified Mike Sterrett as "currently head of the Organized Crime Strike Force for the U.S. Department of Justice headquartered in San Francisco."[29]

Wilfred Brown[30] testified that he was employed as a business representative for Local 3 from December 1962 (sic) until December 1975. Lewis, Sr., hired him as a training coordinator for JAC on March 1, 1976, and he continued in that position until he was terminated (effective) June 30, 1980.

Brown explained his duties as a coordinator at some length. He said he was to indoctrinate apprentices with the rules, regulations, and standards; instruct them about reporting for training; inform employers of the type of training the apprentices would need; and prepare reports and records for the JAC. Brown said he would go to Honolulu Community College on Saturdays to see that the apprentices were there and well-behaved. He waid he would also offer assistance to the instructor. Brown stated that he would arrive at the JAC office at 6 a.m. during the week and visit each apprentice about four times during the month. At the time of his discharge he was serving about 22 apprentices but had serviced as many as 59 during his employment as a coordinator.

Brown said he reported on a daily basis to JAC Assistant Administrator Umiamaka. Harold, Sr., also would request Brown to appear before him, he said, and on some occasions Lewis, Sr., would come to the JAC office and speak to him about the training of apprentices.

Brown said he was instructed by Lewis, Sr., from 1974 to 1978 "to go out and solicit and to pick up liquor from all the employers within the industry." According to Brown, Lewis wanted "Hague & Hague [sic] and all your best Scotch, nothing but the best." Liquor and "all types of beer . . . by the volume, by the volume," condiments (cups, plates, containers, etc.), and mixes ("pickup loads of tonics") were collected he said. Brown stated that Lewis, Sr., would order such collections to begin in March for functions occurring later in June or July, although there could be other celebrations (e.g., birthday party for daughter of Chairman Hulihee) in between. "By May everything would be stored in [Lewis, Sr.'s] home in Hawaii Kai," Brown said. Brown recalled stocking Lewis, Sr.'s "huge basement" with booze, mixes, and condiments. Brown indicated that he was required to solicit from contractors. "If I don't, let me tell you, all hell breaks loose."

[28] Souza said he reported to Sterrett what Lewis had said and that Sterrett indicated that "he should mess up all the time because now he is in charge of ten states, including Hawaii."

[29] The parties stipulated into evidence letters (G.C. Exhs. 18 and 19) that state that Souza and Brown had been cooperating with the FBI in an investigation since August 29, 1978.

[30] Brown's rebuttal testimony is summarized, *infra*.

Brown testified that he last solicited for Lewis, Sr., in 1978 because in that year he became embittered as a result of treatment he received at a JAC meeting. And in that year, Brown said, Lewis, Sr., learned "the feds were investigating the pickup of booze."[31]

Brown thought his first contact with the FBI was on July 5, 1978. Souza and he met with Ed Minor at that time. (It was stipulated that Brown and Souza "met with various federal agencies at various times" and cooperated with the Department of Labor and the FBI.) Brown testified that Umiamaka, Lean, and (union dispatcher) Joe Trehern had also been with him when he had with the FBI.

Brown testified that he had a friendly meeting with Lewis, Sr., at the union office on August 30, 1978. Brown said he was called in from the field and found Lewis, Sr., "all smiles." After telling Brown that he was "doing a good job," Lewis, Sr., told Brown he had a favor to ask. Quoting from Brown's direct testimony:

> He says, "Well, first of all, we have some problems. And the problems are: Can you recall all the liquor that you were picking . . . up all this liquor, this booze?" I said, "Oh, it's every year." He says, "That's the problem." He says, "I have word, I have information that the feds are looking into this. And I want you as a brother, because of my position as a constitutional officer of the Operating Engineers, and it would look very bad for me—I want you to take the rap for me." So I says, "The rap? You mean take all those things that all these years that I was providing for you at functions? You want me to take the rap?" He says, "Yea, I want you to do this part for me." I asked him, "Why?" He says, "Because it doesn't look good for the Operating Engineers Union and my position as a constitutional officer." I said, "You know, what you're asking me, right now in my mind I can see my son, who's 13 yars old, I can see my wife. What would become of them if I take the rap for you?" He says, "Don't worry about it, don't worry about it. I want you to take the rap."
>
> I says, "I've never seen an order like this, Harold. I don't know. You're going to have to give me time. I can't give you an answer now." He says, "Well, how much time do you need?" I said, "Well, I'm going to be frank with you, Harold. This is something heavy that I've never been faced with in my life. You're asking me something that you was instrumental. I have to have time to think, at least a week." He says, "Think it over. Whatever happens, you'll always have a job with the Operating Engineers." He says, "I'll be here, and as long as I'll be here, you'll always have a job." And I look, and I says, "Well, gee, I don't know how I'm going to digest this, but it is going to take me a week to put my thought together, because this is something very heavy." He says, "Well, as a brother, it's easy."
>
> But he says, "When was the last time you ever take a trip?" I told Harold, "The last time was in Arizona, in Phoenix, Arizona, and that was about two or three years ago, maybe."
>
> He says, "Well, I think you're due for a trip." He says, "You know, they have the Rocky Mountain conference coming up in Denver, Colorado. I'm going to get the committee to approve your trip. You and Nelson make the Rocky Mountain trip. You and Nelson P. Umiamaka. Go up there. In the meantime, go home and have a good sleep." He says, "Take a day off." I didn't take a day off because I had a tremendous amount of work.

Brown said Lewis, Sr., indicated to Brown in the same conversation that he did not know at that time that Brown had already gone to the FBI but he knew that Souza had. Lewis, Sr., told Brown that friends sitting on the grand jury related this information and Souza would very shortly be unemployed.

Brown testified that he went to the Rocky Mountain conference and that shortly after his return to Hawaii, in October 1978 he thought, Lewis, Sr., told him that he knew that "I did go to the feds." Whether it was "a good guess" on Lewis, Sr.'s part or if someone "in the Federal administration" had told Lewis, Sr., Brown said, "I wouldn't know."

On September 27, 1978, according to Brown, Lewis, Sr., told him "my attorneys advised me to have you plead the Fifth Amendment." Brown said he later met with Ron Au and Larry Miller on October 13, before testifying under subpoena before the Federal grand on October 20. "They wanted me to blow up a story that I had picked up all this booze all these years to entertain employee-members of the Operating Engineers at a beach party," Brown said. He continued:

> And I didn't give an answer because I was very bitter of the whole thing. And they advised me that whenever I appear before the Federal Grand Jury to have me take the Fifth Amendment . . . .[32]

Brown said he testified truthfully "in every detail" before the grand jury and did not plead the fifth amendment. After testifying before the grand jury, he went to the office and found Lewis, Sr., standing in the building hallway. Lewis, Sr., took Brown into the kitchen on the first floor of the building and inquired if Brown had taken the "Fifth." When assured by Brown that he had pleaded the fifth amendment instead of testifying about Lewis, Sr., "receiving kickbacks," Brown said Lewis, Sr., replied, "Good boy . . . that puts me in the clear." Brown said the following exchange then occurred.

> I says, "But being that Mr. Michael Sterrett was very disturbed, he mentioned to me that I would be subject to recall." He says, "Well, I hate to say it

[31] Brown said that fact led Lewis, Sr., to send him and Harold Lewis, Jr., to return a case of vodka to Donald Doi Trucking and Contracting and eight cases of beer to McKay Paving, but the FBI was aware of what was going on.

[32] Brown appeared later with a diary and said an appointment he had with Attorney Au was canceled. He said he did meet with Au and Miller around October 18 and they did *not* ask him "to take the rap" for Lewis. His rebuttal testimony about the interview with union attorneys is discussed *infra*.

> because right now, Larry Miller, who's in town, he represents me, because as a constitutional officer, he has that right to represent me in this matter." I says, "Yes, but Mr. Lewis, what's going to happen to me?" He says, "Well, you're going to have to save you own ass."

Brown said he walked out of the room and into the JAC office and told Umiamaka and Souza "what transpired in there" with Lewis, Sr.

Brown said he, Souza, and Nago would attend JAC meetings and make oral reports of their work as training coordinators until around April 1979. Brown testified Lewis, Sr., constantly criticized him and, to a lesser extent, Souza. Nago would not be criticized at all but would get "a pat on the back"—deservedly so as Brown indicated he "does his work well." Asked if Lewis, Sr., ever told him to police the ratios in 1978, Brown responded, "Off and on, sporadically." According to Brown, he and Souza would be told to "back off" from policing the ratio, but then they would "secretly" arrange for training for apprentices "through the back door." Said Brown: "Allen and I, we used to go and meet with these employers and explain the program and . . . they would place an order to the hall."[33]

Brown said he complained at a JAC meeting in April 1979 that "there were members of this committee that wasn't in compliance." Lewis, Sr., was the only one to respond, Brown said, and he did so by repeating that it was not Brown's responsibility to service the ratio. Brown said he was then excused from the meeting and that Umiamaka later told Brown and Souza that they were never to attend a JAC meeting again.

Brown testified that the apprenticeship program in 1979 was being depleted—"dropping down, dropping down." Umiamaka knew apprentices were needed, Brown said, but he had "no balls." The apprenticeship program was opened up, but few were brought in. Applicants "gave up hope" and found employment elsewhere. Brown said Umiamaka once told him that there was a "scheme" to stop bringing in apprentices. "Then they used this sort of a survey, survey thing."[34]

Brown testified that on April 28, 1980, "we were called back" to attend a JAC meeting. Before the meeting got started, however, Lewis, Sr., started criticizing Brown and Souza in front of the whole Committee for spending too much time in the office on paperwork. Brown said he and Lewis exchanged words:

> I say, "Mr. Lewis, let me tell you something. You have implemented so many forms for us to submit before the Joint Apprenticeship Committee. Then we find ourselves locked in with paperwork . . . ." He says, "Don't give me that bullshit." Then I says, "Hey let me tell you. You have forbidden us to have anything to do with the ratio. You stopped us completely. And we couldn't implement the ratio to see that if the employers were in compliance with the ratio. You have forbidden us from the very beginning, you have fought me all the way at every J.A.C. meeting that I attended up until today. Why, after one year, you bring me back here and then you tell me the same thing that I've told you before in the past." So we got into an argument.
>
> Then he looks over at Mr. Wallace Lean. He says, "Well, I don't know why the business representative of Local 3, District 17, didn't service the ratio." And that's when I stood up, I said "You listen really good to me, Mr. Lewis," because April 22, 1980, Mr. Wallace Lean became the official district representative of this area. And I told Lewis that. He had nothing to do with the ratio. "You trying to pin him for it. You were the one that was against it all the way through. Never once did your business representative ever appear before us, before the window, of the Joint Apprenticeship Committee over here." I have a list of apprentices. Not once. I've left messages time and time. "Contact this employer, see that they be in compliance with the ratio." Never once I got one response from the business representatives. That's why we had to go through the back door.
>
> All those apprentices out there receiving good training, excellent training, was through the efforts of me and Souza.

Brown said he and Souza were then ejected before the JAC meeting got started.

On June 12, 1980, Lewis, Sr., came up behind Brown in the office parking lot as Brown was unlocking his car. According to Brown, Lewis, Sr., spoke to him as follows: "It won't be long before you'll be on the outside looking in." Brown said he had heard the threat of losing his job many different times, and he just looked at Lewis, Sr. Souza, who was nearby, asked Brown "what was that all about?"

JAC Administrator Atkinson "flew in special . . . supposedly to hand carry" the termination letter(s) to Brown, although, according to Brown, the letter was actually prepared in Honolulu. Brown said Umiamaka had told him and Souza earlier that terminations were in the works.

Harold Kanohoalii Lewis, referred to during the proceeding as "Harold Lewis, Sr."[35] said he had been a member of the JAC and a trustee of the Fund since

[33] Brown maintained that Lewis, Sr., was the only Committee member to criticize his JAC reports or discuss the manning ratio. Brown said he complained about lack of enforcement of the manning ratios at JAC meetings but "none of the employers ever responded to me or gave me a definite answer."

[34] Brown's testimony concerning the time when he first learned that a staff study was being made is somewhat confusing. Evidently he first learned of it in 1979 when he accompanied Assistant Administrator Umiamaka and Souza to the Department of Labor to inquire of Dale Bennett whether the JAC could lawfully reduce the number of coordinators under the "Prudent Man Rule." Brown said he trusted Umiamaka at that time "like a brother" and paid little attention during the discussion. He indicated he later lost his trust in Umiamaka and regarded him "like a dead fish floating down the rivers."

[35] Lewis stated that he was not a senior, although he said his son's given name is Harold John Lewis, Jr.

1967.[36] He denied knowing Brown and Souza had been cooperating with the Federal Government in an investigation of him until after he "read it in the news media," which occurred, he said, after Brown and Souza had been terminated. He testified that he was never told of Brown and Souza cooperating with the Federal Government in an investigation by anyone on the grand jury, by anyone in the FBI, or by anyone from the Justice Department. Lewis, Sr., denied telling either Brown or Souza that he knew they were cooperating with the Federal Government, and he denied threatening either "for talking to the Federal Government." Finally, Lewis, Sr., denied asking Brown to "take the rap" for him and telling anyone that he had arranged for the transfer of strike force head Sterrett.

Joseph Akiona identified himself as the president of Moses Akiona, Limited, a general contracting firm, and a member for about 13 years of both the JAC and the Training Fund. He said he had usually attended the JAC meetings and undertook to explain how the apprenticeship program evolved in Hawaii. He said he had known Dale Marr, Harold Huston, Ed Hulihee, and Clint Hardesty, either trustees of the Fund or members of the JAC, or both, for some time and that he was of the view that another member or trustee could not tell anyone of them "what to do" regarding apprenticeship matters. He expressed the view that Lewis, Sr., did not control either the JAC or the Fund. He said he had not been approached by Lewis, Sr., to get rid of either Souza or Brown for personal reasons; if he had done so, according to Akiona, he would have told him to "go to hell."

Akiona testified that Lewis, Sr., had not appeared to be eager to terminate Souza or Brown and that Lewis, Sr., had taken no part in the discussion at the June 1980 Fund meeting concerning the action to be taken on the JAC staffing study. The reason for reducing the staff, he said, was "purely economical." He indicated that the trustees have to be "prudent in managing the funds" and "make the required kind of decision to reduce the costs."

Akiona remembered that in 1978 Jerry Kringel was added to the JAC staff as a "visual aid man" and that Souza was terminated as a "reduction in force." He also recalled Souza "was out a few months and he was hired again" in August because "we felt the program was going to be expanded." But then in the following June, at the urging of Chairman Hulihee, the JAC voted to have a study to see if the JAC staff should be reduced. The study was made and completed before the Fund met again (at Rancho Murrieta, California) on September 27, 1979. The study was discussed but action on the study recommendation, that two coordinators be let go, was deferred, he said, because "we were going to open the program" for apprentices.[37]

Nelson Umiamaka[38] stated that he had been the assistant administrator of JAC for Hawaii since December 1973. He previously served as a JAC training coordinator for about 2 years. Umiamaka testified that both Souza and Brown performed well as training coordinators for over a year but then changed. Souza became lackadaisical, "was reluctant to read" JAC materials, and developed a poor attendance record. Souza also was late in submitting reports and lacked communications skills, Umiamaka said. Brown had difficulty comprehending JAC materials, and he also presented an absentee problem, according to Umiamaka. Umiamaka said there had been complaints from apprentices about both Brown and Souza.

Umiamaka stated that he had told both Souza and Brown that enforcement of manning ratios was a function of the union business agents. He acknowledged that both Souza and Brown frequently complained that the manning ratios were not being maintained and that they advocated their enforcement.[39]

Umiamaka testified that he was of the opinion that the JAC in Hawaii had been overstaffed and that he had recommended as early as January 1978 that one coordinator should be eliminated on the basis of "economics." There was a lot of talk about ERISA at that time, he said, and "I just felt that we had to do something because of the lack of numbers of apprentices we had."[40] Umiamaka said he had made evaluations of the two coordinators on Oahu at that time (at Lewis, Sr.'s request) and include them in his recommendation to the JAC (Resp. Exh. 4). Umiamaka's recommendation to the JAC was apparently given little consideration, at least initially, and in April 1978 another (audio-visual) coordinator, Jerold Kringel, was added to the staff (Jt. Exhs. 1-4).[41]

In June 1978, the JAC did vote unamimously (on motion of employer-members) to terminate Souza as part of a "reduction in force." But Souza was rehired on

[36] I believe, and find, that Lewis, Sr., was aware, or at least certain his own mind, that Souza was cooperating with Federal authorities on August 30, 1978, when a special session of the JAC was called to rehire Souza. I believe, and find, that Lewis, Sr., knew Brown and Souza were cooperating with Federal authorities well before he read it in the news media as he claimed. I believe, and find, Lewis, Sr., asked Brown to "take the rap" as Brown testified. In short, I find virtually all of the testimony of Lewis, Sr., to be not credible.

[37] Akiona said the program was opened for apprentices and "we pretty near used all of them, almost 100 or so." Akiona did not appear to be particularly knowledgeable about the operation of the apprenticeship program, and some of his statements were not credible, including the assertion that Lewis, Sr., did not control the JAC and his claims of independence. He claimed Lewis, Sr., never expressed hostility toward either Souza or Brown; only "constructive criticism" had been offered by JAC members. (He said he thought Brown's reports were "good," better than Souza's.) He asserted that he had not heard either Souza or Brown complain that manning ratios were not being enforced (not JAC's job, he said) and denied that Brown had accused his company of being out of compliance.

[38] Umiamaka also testified as a surrebuttal witness (discussed in fn. 60, supra).

[39] Umiamaka said that after consulting with the administrator he wrote the job description for training coordinators (Resp. Exh. 4). He indicated that items 13 and 14 of the document, which he was asked about on direct, meant that the coordinator was to explain the training of apprentices. On cross-examination, Umiamaka said he was not sure if the job description had been prepared when Souza and Brown were hired.

[40] At that time there were 25 to 30 apprentices for each of the two coordinators in Oahu. Umiamaka later testified that a coordinator should be able to handle 55 to 80 apprentices, although he had handled many more (180, 120 of whom were employed) in 1973-74 when there was less paperwork to do.

[41] Umiamaka indicated that he thought Kringel made an important contribution to the apprenticeship program asserting Kringel "enhances our program" with his "audio-visual productions." He added that after Souza and Brown left in 1980 Kringel was "upgraded to training coordinator, and he and myself take care of the responsibility of the duties of Allen and Brown." Umiamaka said he served seven apprentices on Kauai.

August 30, 1978, according to Umiamaka, "because of anticipated increase in the workload" and "because he was valuable for the program." "Management" expressed concern about being able to justify the rehiring, but, according to Umiamaka, Lewis, Sr., said Souza's termination had been "unfair as he was on vacation at the time."[42] Umiamaka maintained that he continued to be concerned about the overstaffing and that he discussed the matter with Chairman Hulihee and JAC Administrator Atkinson between September 1978 and June 1979. At the June 1979 Trust Fund meeting held in Honolulu, Hulihee recommended an "independent survey" of the JAC staff, but it was decided, at the urging of Dale Marr, that Umiamaka and the administrator should make the survey. The survey was made and completed in August 1979, according to Umiamaka. He said Souza and Brown were aware of the study being made and that he had told them that there was a possibility that one coordinator would be terminated. Umiamaka said that Souza indicated "if it's a reduction in force, no problem" but that Brown said nothing. Umiamaka stated that he consulted with Dale Bennett, whom he regarded as "a personal friend," as Souza was claiming he could not be terminated while cooperating with the strike force. Said Umiamaka:

> I called him up because I knew Brown and Allen were cooperating in an investigation and I wanted to make sure from Dale Bennett if it was possible to terminate a coordinator even though they were cooperating in an investigation.

Umiamaka said he explained to Bennett that there were "so little apprentices to service" and "gave him some figures cost-wise." Bennett saw "no problem" and said, "It's something that the trustees should act on." On cross-examination Umiamaka said he met with Bennett in late 1978 or early 1979 and two or so times after that. He said he also met with Miner and Sterrett. Souza accompanied him to these meetings, but he was not certain whether Brown did.

Umiamaka testified that the apprenticeship program was reopened in September 1979. A revision of the law required new selection procedures and made the old list of applications obsolete, he said. "We started our applications in September and it took us until December to conduct all of the interviews. We finally started indenturing apprentices in January of 1980." Umiamaka said it was expected that many apprentices would be needed, but in the period between January and June 1980 only 40 were "indentured." In June 1980 there were 53 apprentices on Oahu, too few, he said, for two coordinators. (On cross-examination, Umiamaka said the JAC approved 70 applicants at a meeting around January 1980.) Umiamaka said Hulihee told him he need not go to the June 1980 Trust meeting in San Francisco at which it was decided that "the two coordinators on Oahu" were to be terminated.

Umiamaka stated on direct that members of the JAC and Trust knew Souza and Brown complained about enforcement of the manning ratios but that as far as he could tell it engendered no hostility or displeasure on their part. Umiamaka said Lewis, Sr., did not push adoption of the staffing study recommendations, did not advocate termination of either Souza or Brown, and did not control the JAC or the Trust. Umiamaka also testified that Lewis, Sr., did not "tell" Marr, Houston, Hulihee, Hardesty, or Akiona what to do with respect to the apprenticeship program.

On cross-examination, Umiamaka indicated that *he* had reported to JAC meetings that employers were not complying with the manning ratio but that he thought the Fund trustees were not aware of it—a strange comment since some of the Fund trustees also sit on the JAC. Umiamaka was obviously reluctant to criticize Lewis, Sr., or the operation of the JAC, although he made statements on cross-examination that indicated that he knew Lewis, Sr., did exercise control over the JAC. He said he worked under both the chairman (Hulihee) and the cochairman (Lewis). He acknowledged Lewis, Sr., would "direct" him to do things and that he would do them. He said he recorded in a diary some matters which he thought were "questionable." Umiamaka acknowledged that he had excused Brown and Souza from duty and had sent them to perform jobs at Lewis, Sr.'s home unrelated to their duties as training counselors. He said he had questioned such an instruction from Lewis, Sr., and had been told by Lewis, Sr., "You send him up here." Umiamaka said he had reported activities of Lewis, Sr., to Hulihee who, according to Umiamaka, "would shake his head." Umiamaka said he had prepared the April 14, 1978, letter terminating Souza at Lewis' request. He said the letter was not presented to a meeting of the JAC and that he gave it to Lewis, Sr., without ever discussing it with Souza.[43] Umiamaka admitted that Lewis, Sr., had told union agents and JAC coordinators in a meeting that he wanted them to "bust" Hawaiian Dredging in every way possible. Umiamaka acknowledged that Lewis had stated at an evening JAC meeting in February 1978 in the presence of employer-members Hulihee, Ho, and Akiona that the Union was not going to pay the JAC for the Union's use of JAC's Xerox machine, stating:

> No f—ing way we're going to pay. Are you crazy? I run this committee and I say flat ass we ain't paying.

Umiamaka acknowledged that the matter was dropped, and the employer trustees made no response.[44] At the

[42] I am unable to believe that Umiamaka did not know Lewis, Sr., arranged for the special session of the JAC and the rehiring of Souza because Lewis, Sr., was certain in his own mind that Souza had gone to the Federal authorities to complain about Lewis, Sr. On cross-examination Umiamaka acknowledged that Lewis, Sr., "about September" indicated that he thought Souza had put the finger on him to the FBI. Lewis, Sr., of course accused others also. Lewis, Sr., thought Lean was also behind the investigation and forbade Umiamaka from going upstairs to Lean's office.

[43] Umiamaka also said Lewis, Sr., told him to fire JAC Secretary Jean Yee and that he had not done so. He did not elaborate or explain the matter any further, however.

[44] Umiamaka acknowledged making an entry to this effect on February 25, 1978. Later, "about September," Umiamaka thought, Lewis, Sr., told him and Union Office Manager Fujimoto that the JAC could bill the Union for use of the Xerox and sometime later stated, "The only thing

Continued

same meeting, Umiamaka recommended letting one coordinator go because of the decreased workload, but Lewis, Sr., said, "I don't give a f—k about the work, I ain't laying off nobody, period."

Umiamaka acknowledged, when shown another entry in his diary, that Lewis, Sr., had told him to make room reservations for two "personal friends," Rodriquez and Simeons, in May 1978 and that the JAC should pay for them. Umiamaka testified on cross-examination that Lewis, Sr., had called a special meeting of the JAC on August 30, 1978, when Souza was rehired and that Lewis, Sr., told the members present, which included Hulihee, Akiona, Lewis, Jr., and Lean, of the "anticipated workload" and that Souza would be "valuable" to the program. Umiamaka said he declined to recommend rehiring of Souza (with only "about 29 apprentices on board at that time") when Hulihee suggested that he do so, and Lewis, Sr., then made the motion himself saying:

> I'll making the f—ing Motion, for crying out loud. Ain't anybody here got any balls? Sons-of-bitches.

Hulihee seconded the motion, and all voted for the motion except Lean who abstained.[45]

Umiamaka agreed that Lewis, Sr., would question Brown and Souza at JAC meetings but not Nago, whose reports Umiamaka said were "better." Umiamaka, when questioned about a luncheon meeting he had attended with Lewis, Sr., and Hulihee, recalled that Lewis had stated at that time:

> I'm tired of being made to look like a f—ing donkey by Alley Souza and Alfred Brown. When I question them about the reports they get defensive, and I'm tired of their s—. I didn't build the f—ing empire to let those two assholes tear it down.

James R. Atkinson identified himself as the administrator for the Joint Apprenticeship Committee in Utah, the Joint Apprenticeship Committee in northern Nevada, the Joint Apprenticeship Committee in northern California, and the Joint Apprenticeship Committee in Hawaii, a position he said he had held since 1977.[46] He indicated his position gave him responsibility over four separate entities. Previously he had worked as an operating engineer and as a training coordinator. According to Atkinson, the collective-bargaining agreement delegates no responsibility to the JAC with respect to manning ratios. He said the "primary function" of a coordinator is to assist the apprentices in acquiring the training prescribed in the standards for registered apprentices and to carry out policies of the JAC.[47] Atkinson stated that he had been concerned about the size of the JAC staff almost from the time he became administrator. At the March 1978 Trust meeting in Hilo he said he mentioned to the chairman and cochairman the "excessive number of people on Oahu" but was told that he was not familiar with the working picture there and that an increase of apprentices was expected. During the executive session of that meeting he said he heard that the two coordinators on Oahu were "not up to par" and he recalled that each one was called in separately and questioned. Shortly thereafter, in June 1978, the JAC terminated one of the coordinators, Souza, but he rehired, he recalled, around September of the same year. In the following year, in June 1979, Atkinson attended the Trust meeting, held in Honolulu, and was directed to make a study, with the help of Assistant Administrator Umiamaka, and make a recommendation. Atkinson corroborated the earlier testimony that Dale Marr had opposed the study being made by an outside consultant. Atkinson explained how the staffing report (Resp. Exh. 5) was prepared and stated that after it had been reviewed by Umiamaka he mailed it out to all of the trustees either in late August or late September 1979. Action on the report was deferred at the September 27 Trust meeting because of an anticipated increase of apprentices, he said. Action was again deferred at the December 1979 meeting, but at the June 1980 meeting, on motion of Dale Marr, the Trust directed implementation of the report. He said on Wednesday following the meeting he traveled to Honolulu and presented the termination letters to Souza and Brown. He said Brown and Souza had been selected for termination because of Umiamaka's complaints about them, and it was thought that Kringel, the education coordinator, "could handle the task of a training coordinator in addition to his audio-visual." Further, he said, "it didn't seem reasonable to terminate" Nago who had to cover Hawaii and Maui.

Finally, Atkinson expressed the view that he did not believe that Lewis, Sr., told Marr, Houston, Hulihee, Akiona, or Hardesty "what to do."

Dale Marr is the business manager and chief executive officer of Local 5 of the Operating Engineers since the end of 1973. He has been a trustee of the Trust Fund for the same period. He has been a vice president of the International Union of Operating Engineers for 5 or 6 years. Marr began work as an operating engineer as a deckhand on a dredge in 1942 and worked his way up through the Union. He has negotiated contracts for the Union and has been active in setting up apprenticeship programs and promoting employee safety.

Marr said he attended the Trust Fund meeting in June 1979 at which it was decided to conduct a study of JAC operations in four different States. Marr indicated that he had some doubts about the necessity of such a study. The number of apprentices and the size of the JAC staff were already known, Marr pointed out, and a study would tell a story that would "stick out like a sore

the Feds have against me is this Xerox machine, because everything else they have is hearsay or circumstantial." While at first denying "specifically" any recollection of an incident involving Modern Trucking, he acknowledged that he had earlier made a diary entry that Souza had told him that Lewis, Sr., ordered Souza to "shut down" Modern Trucking if it was hauling for the Hawaiian Bitumuls job. Umiamaka said he did not hear Lewis, Sr., say it, but he agreed that Souza had reported that Lewis told him at that time he "runs the J.A.C."

[45] Umiamaka said he called and reported this action to Atkinson who said he would pass the information on to Dale Marr. In September Lewis, Sr., asked Umiamaka about making such a call and told him that he should only report JAC problems to him and Hulihee. Umiamaka claimed that he continued to keep Atkinson informed, however.

[46] Atkinson is Dale Marr's son-in-law.

[47] "A registered apprentice," Atkinson said, "is one that is signed to an agreement, a state agreement, that is signed by the Joint Apprenticeship Committee, the apprentice and the state." He said "indentured apprentice" and "registered apprentice" mean the same.

thumb." Marr was able to persuade the Fund trustees not to have an "outsider" make the study, however. Marr said he was "burned up" when JAC Administrator Atkinson mailed out copies of a draft of the completed study since it recommended two dismissals—"a very sensitive issue." Marr said he spoke to employer representatives Hulihee, Hardesty, and Akiona at the September 1979 Trust meeting, at the request of Lewis, Sr., who, Marr said, wanted the Trust to hold "off a while and see if it was necessary to get rid of the people," and it was decided to defer action on the staff report because the apprenticeship program was to be reopened. Marr said he was told by Atkinson and Lewis, Sr., in late 1979 that many applications had been filed, and no action was taken at the December Trust meeting. However, he said he told Lewis, Sr., in April 1980 that the "rosy future . . . has not happened" and that the staff report must be taken up at the next meeting. At the June 1980 meeting the Trust "implemented" the staff report and ordered the two terminations as recommended. "There was a lot of kids qualified," he said, "but the work wasn't there" and the trustees had "to face to that report." He indicated that it was up to the administrator and assistant administrator to decide who should be let go: "We instructed them to implement it." Marr denied that Lewis, Sr., had indicated he wanted to get rid of Brown or Souza. In September 1979, in fact, Lewis had sought to defer action on the staffing report because he did not want any terminations. Marr indicated that he did not believe any one person dominated the Trust Fund. He said he did not believe Lewis, Sr., told Hulihee, Houston, Akiona, or Hardesty what to do in Trust matters. He noted that each trustee is charged with a fiduciary responsibility, but at the same time he noted none would likely take the stand and say, "Well, Lewis browbeat me."

Marr explained that Lewis, Sr., had held a unique union position in that Hawaii had been the only district where there was a union executive as well as a district representative. Wallace Lean had been designated by Marr as the district representative in Hawaii years earlier, but Lewis, Sr., also had held a position there as an "executive." As a result, Lean had not been given the "latitude" he needed to function in his district. In April 1980, Marr relieved Lewis, Sr., of his "day-to-day" duties with the Local, and since that time Lewis, Sr., has acted only as financial secretary in charge of the political scene in Hawaii.

Marr explained that the Trust Fund votes money, "a very strict budget," for the JAC, and it is up the JAC to carry out the day-to-day training operation. If the JAC has the money, it can hire. The JAC can also discharge members of its staff. JAC training coordinators are not to enforce the manning ratios, according to Marr, but are to refer complaints of that kind to the Union's district representative for action.

Jean Yee testified that she had been office secretary for the JAC since June 13, 1977. She was critical of, and indicated a bias toward, both Souza and Brown.[48]

Yee stated that Souza did "a little of [the] work" required of him in the office as a training coordinator and "a lot of personal things." Among the personal things he spent time on, she said, was Selective Security Service, State Construction, Medipets, World of Fine Arts, and Pop Warner Football. She said much of his time was spent on these endeavors and that she had to take calls for him pertaining to some of them. Souza had a walkie-talkie in the office which, she said, Souza used in dispatching security guards in connection with the operation of his Selective Security Service. She said Medipets referred to animal insurance plans which Souza had promoted. Souza sold jewelry and furniture through his World of Fine Arts.

Yee stated that Brown had taken bets in the office on football games during two seasons and had used "our copying machine" to run off "parlay sheets." She said she had observed Brown watch television in the office in the afternoon.

Yee said she did not regard Brown and Souza as truthful persons. She stated that both Brown and Souza had taken JAC office supplies for their personal use. She said Brown had used the JAC phone to call his ex-wife on long distance. Both Souza and Brown, according to Yee, were late to work in the morning, did not always call in during the day as they should have, and both, especially Souza, were late in returning to the office in the afternoon. She stated that both had forged apprentices' signatures on JAC records and more often signed for representatives of employers. She also said she had received complaints from apprentices about both.[49]

Harold Lewis, Jr. the assistant district representative for Operating Engineers Union, Local 3, said he had been working as a business representative of the Union since 1976. Previously he had worked as the sole JAC training coordinator on Oahu, servicing 130 actively employed apprentices. He said he visited each apprentice at least once a month.

The testimony of Lewis, Jr., dealt primarily with General Counsel's Exhibit 16, the exhibit offered by the General Counsel through Souza to show that employers were not complying with the manning ratios prescribed in the master agreement (G.C. Exh. 3). Lewis, Jr., main-

[48] Yee's concern for her JAC position I believe affected her testimony. In the past she had been friendly with both Souza and Brown. Her surrebuttal testimony is referred to in fn. 58, *infra*.

[49] Respondents offered a number of documents through Yee about which she testified in support of their contention that both Brown and Souza had made false entries in monthly reports that had been submitted to the JAC. Such evidence was offered for impeachment of Brown's and Souza's testimony, not as justification or the basis of their termination. Yee also identified and testified concerning other documents which she said contained forged signatures by Souza and Brown. Yee identified a summary of office supplies purchased between January 1977 and April 1981. She was willing to guess that Brown had taken $100 in office supplies for his own use and stated she had seen Souza "actually take through the years that I was there" $200 worth of office supplies. But on cross-examination she was less certain about what Brown and Souza had taken and when they did so. She said Brown was not late in 1980 and she was not sure about Souza's absences. She said she checked on long-distance calls made by Brown to his ex-wife on the JAC telephone whose number she recalled began with "935" and included an "8" and a "3." (It was later stipulated that JAC bills showed four calls to Brown's ex-wife on the Big Island (Hawaii) during the period 1976–80.) She said she reported such calls to Umiamaka who said nothing about it. She said she never reported on Brown's "football parlays" and admitted that she had "played them" herself.

tained that there were so many errors in the exhibit that he did not believe Souza had prepared it; he said he thought "Souza would have a better understanding" of the manning ratios than the exhibit indicated. According to Lewis, Jr., whoever prepared the exhibit had, in computing the number of apprentices required, improperly counted supervisors as journeymen and had also erred by counting journeyman with "zero hours" listed in the monthly trust fund contribution reports. According to Lewis, Jr., manning ratios are to be calculated on a "daily basis," and journeymen on each jobsite of an employer must be taken into account.[50]

Lewis, Jr., said Lewis, Sr., had held union staff meetings periodically, sometimes with JAC staff members in attendance, at which union business representatives were told to police manning ratios. He said he never heard Lewis, Sr., say not to enforce he ratios. Lewis, Jr., stated that it was the job of business representatives to enforce manning ratios, not that of training coordinators. He said he had tried to do so "within my duties." "The best way to do it," he said, "would be go to the office of that employer and try to get an actual count of their payroll or through the personnel there." He acknowledged that he had not made a report on manning ratios either to Lewis, Sr., or to District Representative Lean.

Jerold Kringel was employed as an educational coordinator by the JAC in April 1978 and was promoted to training counselor on July 1, 1980, to handle the work of both Souza and Brown. He said he had worked as a journeyman operating engineer before being employed by the JAC. Kringel had served as a combat photographer in Vietnam and, since being employed by JAC, has developed visual aids (slide and video tapes) for use in the training of apprentices.

Kringel testified that it is the employer's obligation to train apprentices to operate and repair heavy equipment. Kringel stated that he was currently servicing around 47 apprentices and that he was seeing each at least once a month, some more often than that. He said when he took over as a coordinator he "found a lot of contractors were kind of using apprentices as laborers" but he had been able to rotate apprentices so they would receive better training. Kringle also challenged a number of signatures and other entries on reports submitted by Souza and Brown to the JAC.

Kringel also testified that Souza received a lot of personal calls (six a day on the average, he thought) at the JAC office. Umiamaka ultimately issued instructions that personal phone calls were not to be taken, he said. Kringel said he recalled that Souza had promoted his Medipet animal insurance and jewelry businesses at a Saturday school session of apprentices.[51]

Wendell Lewis, superintendent of Pacific Construction, testified that he thought Jerry Kringel was "doing a very good job" as a training coordinator. He said his company had had two apprentices assigned to it for training at the same time in 1976, but thereafter the company has rotated and trained only one apprentice at a time. Lewis said he sees Kringel often and that Kringel shows concern for training apprentices. The thought of Brown and Souza being reinstated "depressed" him, and he would not hire them, he said. Lewis said he had known Souza "as a union agent, an apprentice coordinator and as a part-time security guard." The witness said Souza would seek him out at a jobsite and offer security service there. Wendell Lewis said that Souza had asked him one time for free gravel for his driveway; it was delivered and then Souza asked that it be spread out.[52]

Fabian Kalili, a journeyman operating engineer, testified that he had entered apprentice training in April 1978 and was visited by training coordinator Brown. He said he was later seen (more often) by Kringel, who had contacted him about being a witness for Respondents. Kalili said he had complained to Brown about some of the training he was receiving and also to Umiamaka. After complaining to Umiamaka, he said, "things started to change." He said he saw Brown at approximately 75 percent of the Saturday school sessions; he agreed that Umiamaka had to speak to him about being absent on Saturdays.

Respondents offered the testimony of several other witnesses in support of their position that Souza and Brown had not served apprentices well as training coordinators, including the following:

Russell Kamiya said he was seen by Souza about five times while working for Hood Corporation between January and June 1978.

Manuel Milloira said he was visited by Souza or Brown once a month or so (but more often later by Kringel, who asked him to testify) while in training at a number of jobsites. Milloira recalled that Souza had, during recess, talked to him and passed out business cards about sporting goods discounts.

Terence Lee Young said he started as an apprentice in February 1978 and was assigned to coordinator Brown for servicing. Young stated that he complained to Brown about the "laborer's work" he had to do but got no help until July of that year when Kringel, who arranged for his appearance as a witness, got him "rotated."

Ernie M. Cabanilla testified that he started as an apprentice in February 1979 and was serviced initially by Brown, later by Souza, and, at the time of the hearing, by Kringel, who had asked him to appear as a witness. Much of Cabanilla's testimony dealt with his efforts to obtain training on machines, especially while assigned to work for the Haitsuka Brothers firm. He indicated he was not given work because laborers were operating the machines, and Souza, who he said failed to keep appointments with him, was of little or no assistance. Souza told him, he said, that "the son, Edmund Haitsuka," was "a good friend" of Souza's; this "completely shook me up," Cabanilla said, because "he was supposed to take care of

[50] The "correct" apprentice figures for employers listed in G.C. Exh. 16, as computed by Lewis, Jr., appear in Resp. Exh. 17.

Souza testified on rebuttal that he and Jean Yee together had prepared G.C. Exh. 16 and that "we talked to Nelson [Umiamaka] about it." Souza said that Yee would call a contractor and obtain "the exact amount of journeymen" and that she had "typed the whole thing."

[51] Kringel's rebuttal testimony is discussed in fn. 60, *infra*.

[52] Wendell Lewis identified his signature on some JAC papers but indicated one (with the first name spelled "Wendal") was not his.

us." Souza did not want Cabanilla to speak to Umiamaka, but Cabanilla did so and wrote a note.[53]

Veronica Lynn Benkman served as an apprentice between April 1978 and August 1979 and was seen during that period by Brown and Souza. She said other apprentices resented her "squealing" about training opportunities and ultimately she left the program to work as a diamond broker. She said Souza on one occasion had promoted his pet insurance to a class of apprentices one Saturday morning.

Michael Moisa, who began training as an apprentice in January 1979, complained of the places he was assigned to work. He claimed Souza had told him to report hours of training that he had not received. He indicated Brown was of little help to him and threatened reprisals for going over his head to complain to Umiamaka. He admitted on cross-examination that he had missed work and class on Saturday for lack of transportation.

Arley Kiyono, who entered the apprentice program in 1978, also testified that Souza had complained about apprentices taking complaints to Umiamaka instead of to him or Brown. Kiyono said he was currently being seen (two or three times a month) by Kringel, who arranged for his appearance. He also stated that Souza had promoted his personal businesses (pet insurance and sports travel) at a Saturday school session attended by apprentices.

Donald Lewis, an apprentice, indicated a dislike for Souza, the coordinator assigned to service him before Kringel took over in 1980. He said he had gone to the office to "grumble" to Souza about problems (lack of help in securing a type 5 driver's license and the assistance of a journeyman) but with little success.

The General Counsel recalled both Charging Parties, Brown and Souza, and offered the testimony of apprentices and other witnesses to counter the defense evidence offered by Respondents.

Brown defended his work as a JAC training coordinator when recalledas a rebuttal witness. He indicated that he thought he had properly serviced apprentices assigned to him (including Donald Lewis, whom he had lectured about his conduct in class, Benkman, Cabanilla, Moisa (whose complaints about his assignment at Okada Trucking Brown denied), Kiyono, Kilili, Young, Kamiya (whom he remembered as "a very talented" heavy-duty repairman apprentice), Milloira, Kumalai, Lisa Chun, and Violet Chun).[54] Brown acknowledged that he had signed the names of journeymen or supervisors because Umiamaka had said "not to burn [his] wheels." Brown said he had run off copies of $1 football parlay sheets each week during the football season and it was known as "a common thing." Jean Yee played his $1 football pool, he said, and she also had a $5 pool of her own. Brown indicated that he had been friendly with Yee, with whom he would have drinks in the office during the last 6 months of employment at JAC. He said he covered for her when she was out of the office and that she received and made personal calls there. She watched TV as did Umiamaka. Brown indicated that entries on his reports that he had visited a jobsite did not mean necessarily that he spoke with apprentices. He said he had called in as instructed, although sometimes the line would be "tied up."[55] He said he was never criticized for being late or told that that apprentices were complaining about him. He said he had taken materials for use in training class but denied taking office supplies for his own use.

Brown was thoroughly cross-examined by Respondents on rebuttal. His answers were not always clear or responsive. It appeared that he did not understand some questions propounded, and for good reason. He had been attending the hearing during the day and working many nights. Testifying on a Thursday, he said he had been able to get only 9 hours of sleep since the previous Monday.[56]

It is apparent from Brown's testimony that many of the JAC records maintained on apprentices assigned to Brown (and Souza) contained deficiencies with respect to the amount of training received—whether kept as directed by Umiamaka, as Brown testified, or not. Some apprentices were allowed to sign for hours worked during a given month, relying on their memory; journeymen or other representatives of employers had "verified" hours worked without consulting a record; and training coordinators had signed names of employer representatives if signatures were missing. While Brown initially denied doing any of Souza's work for him, he later conceded that he had filled out "several" evaluations for Souza.[57]

Testifying on rebuttal, *Souza* indicated that he had properly serviced apprentices assigned to him (including Milloira, Donald Lewis, Cabanilla, Kiyono, Moisa, Benkman, and Chun), visiting them at jobsites or otherwise seeing them as necessary. Donald Lewis would give a "shake" (okay) sign, he said; an employer wanted to "Shanghai him" because of the way he had operated the water truck. Souza conceded he had told Moisa to put "extra hours" down on a timesheet—at a time, he said,

[53] George Fetheran, job foreman for Haitsuka, testified on rebuttal that he had supervised Cabanilla when the latter was assigned to work for the company between September 1979 and January 1980. He said he had not heard Edmund Haitsuka refer to Souza as a friend. Cabanilla drove a dozer, hoptoe, and water truck. Cabanilla would "over-rev the engine" of the truck, which broke down "often," and Cabanilla would be out of work for awhile. According to Fetheran, Cabanilla "wouldn't listen."

Souza defended his servicing of Cabanilla during his defense testimony.

[54] Brown was questioned about other apprentices (including Ogawa and Nakamura) on cross-examination.

[55] Union dispatcher William Lindsay testified Brown and Souza would sometimes call his office and state that no one was answering the JAC phone.

[56] Brown's admission on cross-examination that he "can't comprehend" and was suffering from fatigue prompted a counsel for Respondents to request that his testimony be stricken. The motion was denied, but it is apparent his testimony had contained exaggerations. He admitted that he was hostile toward Lewis, Sr., whom he said he despised "for using people," including himself. He conceded that he had incorrectly testified that union attorneys had told him he was "to take the rap" for Lewis, Sr. He stated that he did talk with attorneys Au and Miller on or about October 18 or 19, and, while Au had initially suggested to him that he tell the grand jury that he had picked up liquor for his own use to entertain union members "to protect Harold," before the interview ended he was told "to take the Fifth all the way through."

[57] Brown said Souza "had his hands full taking care of grievance and/or things in regards to the apprentices" and that "we worked together."

when there was no training available and Moisa was needing money. Souza explained that in reporting visits at jobsites he did not always speak to or see apprentices.

Souza agreed that Wendell Lewis had delivered about four wheelbarrow loads of gravel to his home when Souza was employed as a business representative for the Union. The company had a job "right by my house," 100 yards away, he said, and he asked Wendell Lewis if he had material to fill a hole in his driveway. The response was, "Hey, no problem . . . I got excess material . . . ." Souza also agreed that he had told apprentices at Saturday classes that they were to see him and Brown about any problems rather than Umiamaka, and he had done so because Umiamaka had issued such instructions.

Souza said he did not threaten anyone but added that he had told apprentices "how they screwed up, where they screwed up and how they correct the screw-up." Souza said he had talked "one time" about his Medipet insurance to a Saturday class. He said he sold jewelry for "Harold's wife" and had mentioned being a jewelry broker to an apprentice who was getting married. He said he had referred to his Young Sports Travel business after class as some were "heavily into sports."

Souza acknowledged signing for contractors on JAC forms. It was in accord with past practice and what Umiamaka had said could be done, Souza said. He ultimately conceded that Brown could have prepared a number of monthly apprentice evaluations for him. Souza said he could not recall Umiamaka ever criticizing him and stated that both Umiamaka and Lewis, Sr., had praised his work. (It was stipulated that the JAC minutes for January 16, 1979, state: "Committee co-chairman Harold Lewis gave a vote of confidence to J.A.C. coordinators for doing a good job."

Souza obviously had not expected some of the testimony that Yee and Umiamaka had given. "It was supposed to be that we all going stick together." and "tell it like it happened right from the heart," he said, but "you turn around, brother, and you all alone." Souza stated that he and Yee would "rap together" when he was at the JAC. He said he had talked of his Medipet business "openly" at JAC and indicated he had not performed personal business on JAC time except to return calls that were received while he was out of the office. He said he received one telephone call each month on Pop Warner Football. He said he had been involved in the program (holding positions of commissioner and as program director at one time) and that Lewis, Sr., had been of help to him in this regard. He said he had not dispatched security guards (who worked only at night) from the JAC office as Yee claimed; he had brought the radio-telephone into the office only once and did so only because Yee had expressed an interest in buying one for herself. Yee had helped Souza prepare General Counsel's Exhibit 16, the exhibit offered by the General Counsel to show that some signatory employers were "short" of apprentices and not in compliance with the manning ratios. Yee and Souza had both called contractors in preparing the exhibit, and they had discussed it with Umiamaka. Souza said office supplies were available to him only through Yee, and he had not used any for his own use except for "some envelopes."[58]

William Darryl Robertson said he began his apprenticeship in 1977 after being terminated from a paving job for failure to pay union dues. He said he had gone to the JAC office to complain about his training and "gossip" with Jean Yee. He said Brown was "sharp" and would act quickly and that Souza would "eventually" get matters straightened out. Robertson stated that coordinators had visited him once a month; Kringel had been seeing him more often "since this case." According to Robertson, Donald Lewis swore "fluently" and interfered with training class instruction so that he had to be excluded "lots of times."

Fred James Moore, an official responsible for industrial relations for many years at Hawaiian Dredging, a contractor signatory to the master agreement, testified that he knew both Souza and Brown in connection with the training and rotation of apprentices. From his experience he thought Brown and Souza had "a genuine interest" in the apprentices they were servicing. He said he could "in no way judge them not to be truthful."

Timothy Nakamura testified that he was in apprentice training between 1978 and 1980, initially as an engineering aide or operator and later as a heavy-duty repairman. He said he came to the JAC office about once a month. Nakamura, who was unemployed at the time of the hearing, indicated that he had been laid off at times during his apprenticeship and had trouble getting proper training. He did not attribute any fault to either Brown or Souza for his problems, however.

Charles Aiona testified that he had been in charge of security for Selective Security Systems, Inc., for a period of approximately 5 months beginning around August or September 1979 when the business started. Aiona said the business of the company was to provide security at construction jobsites. Aiona said Allen Souza, J. P. Souza, and Earl Aku were the "higher-ups" in the firm, but he (Aiona) was in charge of manpower and the jobsites. The company had a part-time bookkeeper, and Aiona supervised six men. The firm had an answering service; no one was in the office during the day. Aiona said he had visited Souza at his office on two occasions around noontime to pick up paychecks for his men.

Patsy Oshira, who identified herself as office clerk at Local 3, said she had known Souza since 1972 when he worked as a union organizer. She said she was a friend of Souza's and had invested with him in a restaurant business that had failed. She said he had spoken to her about his pet insurance business, and she had heard that he was involved in the sale of jewelry. Oshira indicated that she regarded Souza as a truthful person and not one to threaten anyone, although she agreed that he "talks big." Oshira said she had not worked "close" with

[58] Yee was recalled by Respondents to testify as a surrebuttal witness, but she was asked only about the record that she had made ("on my own") to show monthly reports of Souza were "over a year late." Yee appeared to be anxious to please her employer. Souza testified, however, that she had telephoned him early in the hearing and indicated her support for his position.

Brown like she had with Souza. She said she had heard Brown say, "deny, deny."

Wallace Lean testified for the General Counsel on rebuttal. He has been district representative of the Operating Engineers, Local 3, since 1973 or 1974, but he did not have the "authority" until April 1980 when the powers that Lewis, Sr., had been exercising were transferred to him by Dale Marr, the chief executive officer of the Union.[59]

Lean has been in the Union since 1958. He served as a shop steward on the grievance committee and as a business agent before becoming district representative. He has served as a member and as the secretary of the JAC at least since January 1978 (Jt. Exh. 1). He testified that Lewis, Sr., actually ran the JAC and that Lewis, Sr., had stated that he did.

Lean was corroborative of much of the testimony of Souza and Brown, each of whom he regarded as truthful. Lean did not so regard Lewis, Sr., however, who, he said, "told stories."[60]

Lean said he was present at the JAC meeting held around September 1978 when Souza was rehired. He recalled that the two JAC employer-members present, Hulihee and Akiona, did not favor bringing Souza back but nevertheless supported Lewis, Sr., and voted to rehire Souza. Lean abstained. Said Lewis, Sr., according to Lean, in proposing reemployment of Souza: "Well, f—you guys. The heat's on me. I will make the motion."

According to Lean, JAC training coordinators were instructed to enforce manning ratios "in the early days." He recalled that Lewis, Sr., would hold union staff meetings, sometimes with JAC employees present, when the union and JAC offices were located on Beretonia Street. "Right after we got into new building at Middle Street," in 1978 as Lean recalled it, Lewis began talking about a Federal investigation being conducted. Lean, said Lewis, Sr., reported that he had gotten a call from a contractor and learned that "they were asking questions about liquor . . . ." Lewis, Sr., talked about the investigation on a daily basis for some period thereafter. Lewis, Sr., accused Souza, Brown, Umiamaka, Lean, and others of going to "the feds on him," according to Lean, but Souza and Brown—and Souza more than Brown—he accused primarily. Lewis, Sr., would refer to Souza and Brown as "those two f—ing monkeys." Lean said he testified before the grand jury (in October 1978) and did not recall any further discussion of the investigation with Lewis, Sr., after that.

Lean stated that Brown and Souza did complain that there were not enough apprentices. They would stop by at the union office and make comments such as: "The guy's out of ratios" or "That guy needs apprentices." Lean recalled that Souza complained about (JAC member and Fund trustee) Jake Akiona and that Lewis, Sr., had responded that Souza should "Leave the f—ing kanankas [Hawaiians] alone. Go chase some haolies [outsiders] down." Lean also recalled that Brown, "a kind of mild guy," had turned into a "King Kong" at a JAC meeting and "accused specific contractors about being under the ration."[61]

Lean said he had tried to obtain compliance with manning ratios when requested by Brown and Souza, although he indicated at times "there was really no training opportunity." According to Lean, even journeymen sometimes must do some "general housekeeping" to get their time in and get paid. But he indicated that the Union should accept some responsibility for the fact that there were no more than 47 apprentices in June 1980, even though other things were "happening in the district" at that time. "I guess we weren't on top of it," he said, but "we kind of altered our course when this thing happened" and apprenticeship ratios are now checked on a weekly basis. Lean explained on cross-examination that he had not shut down a job for failure to hire an apprentice but that manning ratios are being "heavily policed."

[59] Marr had testified that Lewis, Sr., was in charge of the local union in "Hawaii from 1958 forward until April of '80 [when] I had to relieve him of his day-to-day duties with [the] local." "In fact," Marr said, "I sent a letter to every member on the islands and said that from this day on [Lewis] has nothing to do with the day-to-day operation of the union."

[60] It is evident that there is an ongoing power struggle within the Union in Hawaii and that such fact was being felt by persons employed by the Union and the JAC, if not also by employers. Curiously, Respondents have challenged the credibility of Lean, the Union's district representative and highest official in Hawaii. Lean revealed some dismay on cross-examination when questioned by counsel who, Lean indicated, had interviewed him off the record about internal union matters and had asked for help in making contact with certain defense witnesses. He was an impressive and a persuasive witness, and I find his testimony to be entirely credible. Lean obviously holds a difficult position and is subject to considerable pressures. He said his "door is always open." Sometimes, he said, "two guys [are] standing out the door," and "you want to pull your hair out." At times he said he "feels like a priest." He indicated that he considers Brown and Souza as friends, along with others who appeared at the hearing. He expressed respect for the ability of Umiamaka—capable of becoming "one of the greatest administrators in the State" if allowed to do his job, he said—and indicated he had been close to him until April 1981 when the two had discussed what they would testify about in this matter. At that time Umiamaka had told Lean that he (Umiamaka) would testify, if asked, that it was the JAC chairman (Hulihee) who ran the Committee. Umiamaka explained his position as follows: "Let 'em go. They get 'em on the second go-around . . . we got to think of our jobs." The "second go-around," according to Lean, referred to a second Federal hearing that could occur. Lean indicated that Jean Yee had, prior to the hearing, complained about Umiamaka ("no balls") and Kringel (for "calling her all kinds of names") but not about either Souza or Brown. Lean said Kringel had passed out a "secret" petition to keep Lewis, Sr., in Hawaii and that he had told Kringel to stop bothering members of the Union at night.

Testifying as a surrebuttal witness for Respondents, Umiamaka acknowledged that he spoke to Lean (and dispatcher Joe Trehern) just prior to the hearing about the way he would testify. He said he had indicated that he would tell the truth, even if it meant his job, but he stated that he pointed out to Lean that "the charges were not against Harold," that the charges were against the JAC and the Trust, and that he had witnessed tie votes on the JAC and five votes "against Harold" on the Trust.

Kringel also testified for Respondents on surrebuttal. He said that Lean had been critical of his efforts in trying to contact Nakamura and Robertson as prospective witnesses for Respondents. According to Kringel, Lean had accused him one night of harassing Nakamura and had told him "to stay out of it." (Robertson and Nakamura testified as rebuttal witnesses and were thoroughly examined.) Kringle stated that on the following day Lean indicated a different attitude and inquired whether Kringel wished to become a union business representative. Kringel testified that he thought he had done nothing wrong as he was doing what the "house attorneys' had asked him to do.

[61] Lean was undoubtedly referring to Hilo meeting from which Souza and Brown were removed. Lean stated that Lewis, Sr., stated at that time that the Union would take care of obtaining compliance with manning ratios. "That was my notice," Lean said.

Lean said he had spoken to Wendell Lewis of Pacific Construction, which he regarded as a "fair" employer, about two female apprentices (Juhn and Chun). He said Souza had prevailed on him to see Wendell Lewis about one who had been kept on a gate flagging traffic instead of being given training. He went with Umiamaka to a jobsite to speak to Wendell Lewis about the other apprentice who decided to quit the program. Lean acknowledged on cross-examination that he had called and spoken to another official of Pacific Construction (Mike Scarfone) about the fact that Wendell Lewis had appeared in the proceeding.

Discussion and Conclusions

Respondents do not now contend that jurisdiction is lacking. Nor could they persuasively. As the General Counsel points out (citing *Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, et al.*, 256 NLRB 1145 (1981)), the stipulated facts establish the Board's jurisdiction. Each of the Respondents, the JAC and the Trust Fund, receives in excess of $400,000 on an annual basis. The parties stipulated that there was a combined annual direct and indirect outflow for the purchase of goods and services outside the State of Hawaii in excess of $50,000. And see *N.L.R.B.* v. *Southeast Association for Retarded Citizens, Inc., d/b/a Southeast Work Training Center*, 666 F.2d 428 (9th Cir. 1982).

I am persuaded that Lewis, Sr., dominated the JAC and made the crucial decisions affecting the employment of Souza and Brown, *insofar as the JAC was concerned*, up until the time of their termination in June 1980.[62] As Lewis, Sr., had stated to Souza, "I run the f—ing committee, I am the f—ing J.A.C.," Lewis, Sr., controlled the apprenticeship program, determining on an individual basis whether or not an employer would afford an apprentice an opportunity for training. As the General Counsel indicated in his brief, it is apparent that Lewis, Sr., gave "special favors to certain contractors by not enforcing the ratio." Lewis, Sr., was the one who determined that Souza and Brown should continue to be employed as JAC training coordinators, irrespective of the number of apprentices in training. In April 1978 Lewis, Sr., caused the preparation of a dismissal notice for Souza and then decided to cancel it. Souza was terminated in early July 1978 and then rehired in late August of the same year because Lewis, Sr., in each case, dictated such actions to the JAC. The claims of Lewis, Sr., Umiamaka, and JAC member Akiona that Lewis, Sr., did not dominate or control the JAC were not persuasive and are rejected. The record, including the testimony of Lean, Souza, and Brown, convinces me otherwise.

I am persuaded that Lewis, Sr., was particularly protective of Souza and Brown from late summer 1978, when Lewis, Sr., became aware that a Federal investigation of his activities had been initiated, until the spring of 1980, at which time Lewis, Sr., became convinced that he was not going to be indicted.

Lewis, Sr., believed (correctly) that Souza had triggered the Federal investigation and for that reason called a special session of the JAC in his conference room on or about August 30, 1978, and demanded that the JAC rehire Souza. It is apparent that Lewis, Sr., became aware very soon thereafter that Brown was also furnishing information to, and cooperating with, the Federal authorities in connection with their investigation. Thus, Lewis, Sr., was anxious to keep both Souza and Brown on as friendly terms toward him as possible and thereby reduce, if not eliminate, the chances that Federal authorities would be able to make use of their testimony and proceed against Lewis, Sr., or one of the entities for which he might be held responsible.

Lewis, Sr., was able to defer for many months any action by the Trust Fund with respect to the staffing study after it was completed in August 1979. When he became convinced that he was in the clear, after the lapse of many months with no indictment being returned, Lewis, Sr., thought he had nothing to fear from either Souza or Brown.[63] Thus, Lewis, Sr.'s concern that Souza and Brown should remain in the employ of the JAC—and be silent about the shakedown of contractors—came to an end in 1980. Lewis, Sr., passed the word, after publicly harassing Souza and Brown at the April 1980 JAC meeting that ended in a heated confrontation with Brown, that Brown and Souza—referring to them as the "two f—ing assholes"—would soon be gone.

On June 12, 1980, Lewis, Sr., told Brown in the office parking lot that Brown would soon "be on the outside looking in." Brown recognized such statement to be a "threat," which it unquestionably was. The threat he perceived, and reasonably so, was the loss of his job for complaining to and cooperating with Federal authorities in connection with their investigation of Lewis, Sr., and the organizations in which he had held high office and had controlled in Hawaii, Local 3, and the JAC. Brown was well aware that Lewis, Sr., dominated the JAC and that Lewis, Sr., could easily dictate the end of Brown's employment as a JAC training counselor. And there is no doubt that Lewis, Sr., was well aware that Brown, as well as Souza, had been cooperating with Federal authorities for many months. Thus, paragraph 10 of the complaint was clearly established.

The prediction Lewis, Sr., made to Brown on June 12, 1980, came true soon enough, for he, as well as Souza, was given a termination notice less than a week later, on June 18. But, as it happened, the motivation for the terminations originated with the Trust Fund and was not shown to be unlawful.

[62] Dale Marr pointed out the JAC, in carrying out the day-to-day training function, was empowered to hire and fire JAC staff employees. However, the Trust Fund, which was responsible for the finances of the Committee, also had the authority to discharge JAC employees and, in fact, exercised such function with respect to two Committee employees in June 1980.

In April 1980 Lewis, Sr., lost standing and authority in Local 3, but the rcord does not indicate that he ceased to dominate and control the JAC as a result of the change in his status.

[63] Lewis, Sr., may have been relieved to some extent to hear Souza and Brown state to him on October 20, 1978, following their appearances before the grand jury, that they had pleaded the fifth amendment as attorneys for the Union had counseled. But even if Lewis, Sr., believed their (pretended) assurances, he could not be certain at that time, or for some time in the future, that he would not be ultimately indicted.

Brown and Souza were undoubtedly engaged in protected activity when they furnished information to Federal authorities concerning the wringing of liquor and other "gifts" from contractors by Lewis, Sr. Such investigation clearly inured to the benefit of employees of the bargaining unit. As the General Counsel points out, relying on *G.V.R., Inc.*, 201 NLRB 147 (1973), "cooperating with a federal agency's investigation of possible corruption in a union . . . clearly effectuates the Section 7 rights of the employees which the union represents." Respondents contend that *G.V.R.* cannot be relied on in a situation such as the case at bar because Brown and Souza, being employees of the JAC, are not members of the unit. I do not interpret the case so narrowly, although admittedly such statement can only be dicta in view of my holding with respect to the allegations relating the discharges.[64] Respondents also assert that *G.V.R.* is inapposite because Souza's and Brown's complaints to Federal authorities allegedly concerned only the *individual* conduct of Lewis, Sr. But such fact would not make the case inapplicable if the JAC had in fact made the determination, at the bidding of Lewis, Sr., to terminate Souza and Brown because they had complained to Federal authorities. And, contrary to Respondents' contention, it would be of no moment whether the JAC members voting the action knew that Brown and Souza were cooperating with the Federal authorities or not if Lewis, Sr., had dictated the decision. The decision, if thus made by the JAC, would still be that of the Committee—and an unlawful one. And the fact that Lewis, Sr., was only one member of the Committee would not immunize the dismissals if in fact Lewis, Sr., had instigated and commanded such action—as he had other actions of the JAC in the past. Having dominated and controlled the JAC, Lewis, Sr., was, of course, a supervisor and an agent of that entity. He was also undoubtedly a supervisor and agent of the Trust Fund, a joint employer with the JAC, as well. But such findings, insofar as the alleged unlawful discharges are concerned, are not necessary ones and can only be *dicta* because I am persuaded that Lewis, Sr., insofar as the record shows, did not dominate and control the Trust Fund in directing the termination of two coordinators in June 1980.

The difficulty with the General Counsel's case as it pertains to the discharge of Souza and Brown is that the Trust Fund—not the JAC—made the decision to terminate two training coordinators in Hawaii. I am persuaded that the trustees action, as as a body, made the decision to terminate two training coordinators in the interest of efficiency, in accord with the recommendation of the JAC's 1979 staffing study—or, as Respondents put it, "their continued employment could not be justified as a reasonable prudent expense.[65] The JAC study, prepared at the direction of the Trust Fund, appears at least to have been carried out in good faith to determine the JAC's true employment needs. Assistant Administrator Umiamaka, who, like Jean Yee, seemed much concerned about his job and thus leaned toward Lewis, Sr., and the JAC, assisted Administrator Atkinson in preparation of the staffing report. However, there is no proof that Lewis, Sr., controlled the direction of the study, or that it was so manipulated or rigged that the conclusions had no validity—even though the number of apprentices in training was undoubtedly less than it should have been for lack of proper enforcement of manning ratios. JAC Administrator Atkinson, in consulation with Umiamaka, decided, after the trustees of the Fund had voted to implement the study's recommendations, which particular training coordinators should be terminated (i.e., Souza and Brown), but that fact does not provide a basis for holding the decision to terminate Souza and Brown was unlawfully motivated. One coordinator was no doubt able to handle the approximately 50 apprentices in training in Oahu at that time, and it was not illogical to retain Kringel, who, while possessing less seniority than either Souza or Brown, had more skills than either Brown or Souza.

While the terminations of Souza and Brown as JAC training coordinators in June 1980 may have suited Lewis, Sr.'s purposes, and may even have pleased him, the record does suggest that Lewis, Sr., dictated the decision or influence the vote beyond exercising his individual vote as a member of the Trust. He did not take a lead in pushing for its adoption. Dale Marr, who did take the lead in suggesting the Trust Fund take action on the staffing study and implement the recommendations, impressed me as an independent and responsible individual,[66] and I credit his testimony that the Fund took the action it did because of "the sheer numbers" of apprentices in training. "We had to do it," he explained; "the work wasn't there." Thus, the paucity of apprentices on Oahu dictated the elimination of two training counselors as the staffing study had recommended.

I agree with Respondents that the terminations of Souza and Brown were not influenced by their efforts to obtain enforcement of the manning ratios, even though, as the General Counsel points out, their enforcement would have inured to the benefit of all union members, especially the apprentices who were to become journeymen. Further, the failure to enforce the manning ratios, regardless of whose responsibility it was to do so, had a significant effect on the number of apprentices in training and thus the workload of the JAC. Even so, I am not persuaded that Brown and Souza were discharged be-

[64] See *Air Surrey Corporation*, 229 NLRB 1064 (1977).

[65] By attacking the competency of Souza and Brown Respondents appear to shift the basis of the discharges. Respondents explain the voluminous testimony was necessary because the training coordinators "testified at length as to how competent and diligent they were" and it was necessary to refute their claims. Respondents contend that Souza and Brown were "inveterate liars" and that their testimony was not worthy of belief. I do not so regard their testimony. Their testimony concerning Lewis, Sr.'s domination of the JAC, the pickup of liquor and other "donations" at Lewis, Sr.'s direction, and the treatment they received from Lewis, Sr., was credible and consistent with other credible evidence of record. The loose operation of the JAC was more attributable to the fact that JAC functioned at the whim of Lewis, Sr., than to the misconduct of the Charging Parties.

[66] Charging Party Brown testified that he regarded Dale Marr as a "very honorable" man. Marr was an impressive witness and crucial to Respondents' defense. Without it, the credible evidence of record could have persuaded me that Lewis, Sr., dominated and controlled the Trust Fund as well as the JAC. It is to be noted that membership of the JAC and the Trust Fund is almost the same, but Marr's presence on the Trust, I believe, made the difference in the lack of control and domination of the Trust by Lewis, Sr.

cause of their complaints in this regard. As Respondents indicate in their brief, the record does not indicate that the Fund trustees (except for Lewis, Sr.) were antagonized by the complaints that Brown and Souza had advanced over a period of "several years" about the failure to enforce the manning ratios.

Thus, I am not persuaded that Brown and Souza (or either of them) were discharged because they complained to and cooperated with Federal authorities, because they complained about the failure to enforce the manning ratios, or because of any unlawful reason. Accordingly, the allegations of the complaint insofar as they allege unlawful discharge of such training coordinators will be dismissed.

Based on the foregoing, I make the following

Conclusions of Law

1. The Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund for Hawaii and Operating Engineers Joint Apprenticeship Committee for Hawaii, are now, and have been at all times matertial herein, a joint employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Operating Engineers Local Union No. 3 is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening Wilfred Brown with discharge for engaging in protected concerted activity, Respondents, as a joint employer, violated Section 8(a)(1) of the Act.

4. It was not established that Respondents violated the Act in any other manner.

[Recommended Order omitted from publication.]