International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 433 (Riley Stoker Corporation) *and* Ferdinand V. Di Lorenzo. Case 12-CB-2311

April 5, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On March 4, 1982, Administrative Law Judge Robert A. Gritta issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions, a supporting brief, and an answering brief to the General Counsel's exceptions.

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, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 433, Tampa, Florida, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

[1] The General Counsel has excepted to the Administrative Law Judge's conclusion that Charging Party Di Lorenzo forfeited his right to backpay herein by intentionally concealing from Respondent the fact that he voluntarily quit his previous employement. Inasmuch as the record herein clearly shows that, under Respondent's referral rules, this fact, if disclosed, would have rendered Di Lorenzo ineligible for referral during the relevant time period, we find no merit in the General Counsel's exception. Cf. *Service Garage, Inc.*, 256 NLRB 931 (1981).

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge: This case was heard on October 5 and 6, 1981, in Tampa, Florida, based upon a charge filed by Ferdinand V. Di Lorenzo, an Individual (herein Charging Party), on March 10, 1981, and a complaint issued by the Regional Director for Regional 12 of the National Labor Relations Board on April 16, 1981.[1] The complaint alleges that the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 433 (herein Respondent), violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer the Charging Party for employment with Riley Stoker Corporation (herein Stoker) because of the Charging Party's support for a rival candidate to the incumbent business manager of Respondent. Respondent's timely answer denied the commission of any unfair labor practices.

All parties hereto were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. A brief was submitted by Respondent and duly considered with the General Counsel's oral argument of record.

Upon the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following:

FINDINGS OF FACT

I. JURISDICTION AND STATUS AS LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The complaint alleges, Respondent admits, and I find that Tampa Electric Company (TECO) is a public utility supplying electricity in Tampa, Florida. TECO does an annual gross volume of business in excess of $250,000. TECO, in the past 12 months, in the course and conduct of its business operations, purchased and received at its Tampa facility goods and materials valued in excess of $50,000 directly from points located outside the State of Florida. Riley Stoker Corporation manufactures and maintains boilers. Stoker annually provides maintenance services to TECO valued in excess of $50,000. I conclude and find that TECO and Stoker are employers directly engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I conclude and find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

I. THE ISSUE

The only issue in this case is whether, contrary to its established referral rules and its collective-bargaining agreement with the Employer (Riley Stoker Corporation), Respondent refused to refer Di Lorenzo, by name, pursuant to the Employer's request.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Respondent, pursuant to its collective-bargaining agreement with Stoker, maintains an exclusive hiring hall arrangement governed by the joint referral rules of Local 433. The contract and the rules, in pertinent part, provide as follows:

(Contract)

5.2 The Employer, under the terms of this Agreement, shall request the Union to furnish all compe-

[1] All dates herein are in 1981 unless otherwise stated.

tent and qualified field construction boilermakers, boilermaker apprentices, and other applicable classifications.

* * * * *

14.1 The selection and number of assistant foremen, foremen and general foremen shall be entirely the responsibility of the Employer.

(Joint Referral Rules)

6.1.1 Selection of applicants for referral shall be on a nondiscriminatory basis and shall not be based on, nor in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

6.2 Competent and qualified registrants shall be referred from the out-of-work lists in a nondiscriminatory, fair and equitable manner. This shall be done immediately and in accordance with the requirements of the employer's job.

6.3 Requests by contractors for key men to act as foremen shall be honored without regard to the requested man's place on the out-of-work list.

6.4 A bona fide request by contractors for boilermakers with special skills and abilities shall be honored and filled in accordance with Section 6.2.

Ferdinand Di Lorenzo, a union member for 49 years, testified that for the last 12 years when employed by Stoker he worked in the toolroom for assistant foreman wages. During 1979 and 1980 on at least five occasions he was requested by name for the toolroom of Stoker, and each time the dispatcher, Parker, referred him to the job. The last employment with Stoker terminated in December 1980, and he signed Respondent's out-of-work list. At this time Di Lorenzo began campaigning for Tessie Lee who was running against incumbent Wayne Richards, Respondent's business manager. Di Lorenzo held between 10 and 20 meetings of members, made telephone contact with members and socialized in the evenings with prospective Lee supporters during the months of December 1980 and January, February, March, and April 1981. Sometime in December 1980, Di Lorenzo told Wayne Richards, Jr. (son of Respondent's business manager), in response to his question that Wayne Richards would not receive Di Lorenzo's support. Di Lorenzo did not disclose to Wayne, Jr., support for any other candidate. The conversation took place on the Stoker jobsite in Big Bend during Di Lorenzo's employment. Wayne, Jr., at the time was employed at Crystal River, some 115 miles north of Big Bend. At no time did Di Lorenzo tell dispatcher Parker or Business Manager Richards that he supported Lee.[2]

In February, Di Lorenzo was referred to a short job at H & M Boiler where he worked 30 hours and left the job upon its completion on February 18. The same day Di Lorenzo went back on the out-of-work list. Di Lorenzo received a termination notice from H & M dated either February 18 or February 19, but this notice did not indicate the manner of separation; i.e., voluntary or involuntary. On February 20 at 9:30 a.m. Jack Sigmund, superintendent of Stoker, called Di Lorenzo and inquired whether he was currently employed. Di Lorenzo said he was unemployed, so Sigmund told him a request would be made to Respondent for Di Lorenzo to operate the toolroom. Di Lorenzo was not referred to the Stoker job as anticipated.

On April 7, Di Lorenzo returned to H & M Boiler to replace his termination slip of February 18 or 19. He had either lost it or given it to the unemployment office. Di Lorenzo testified that he needed a replacement slip for the unemployment office. The following day Di Lorenzo was referred to the Stoker job as a mechanic. He was assigned to the toolroom as a mechanic with Tessie Lee who had been referred to the job on February 23. Lee ultimately became successful in the union election and left the Stoker job. After Lee's departure, Di Lorenzo began receiving assistant foreman wages as in the past.

Parker, Respondent's dispatcher in the hiring hall, testified that Stoker consistently uses the Union's hiring hall. Generally, Jack Sigmund, Stoker's superintendent, begins each job with a request for L. H. Thomas as general foreman and an additional request for foremen or mechanics depending upon the nature of the job. Subsequent requests for men from the hall are then made by Thomas as general foreman. All requests by employers are reported on an office memo form made by Parker contemporaneously with the request. As men are dispatched, each is given a referral slip designating the nature of his referral. Parker stated that Stoker for several years has operated several large jobsites and has consistently requested by name L. H. Thomas as general foreman and Di Lorenzo as foreman or toolroom foreman. Parker could not specifically recall any incident of referral by name of a member to any jobsite as toolroom foreman. Parker did not, however, deny that union referral slips for Di Lorenzo to Stoker in the past 2 years bore the notation "tool room foreman." In each instance, the notation appeared to be his handwriting. Parker also testified that the only member he has referred out as toolroom foreman pursuant to an employer's request was Di Lorenzo to Stoker. Parker added that such referrals of Di Lorenzo occurred at times when few or no members were on the out-of-work list.

Parker stated that on February 20 Sigmund called the hall and requested L. H. Thomas by name as general foreman and four mechanics to start a job. One week later, General Foreman Thomas requested four foremen by name, including Di Lorenzo as toolroom foreman. Parker, before filling the request for foremen, spoke to Wayne Richards, the Union's business manager, specifically about the request for Di Lorenzo as toolroom foreman. Parker counseled with Richards because he was unsure and unfamiliar with the term "tool room foreman." Richards told Parker not to dispatch Di Lorenzo as toolroom foreman because there was no such position for the Union to fill. Parker in turn did not refer Di Lor-

[2] Di Lorenzo was joined in his support of Lee by a majority of the union members, including L. H. Thomas, H. Barthle, W. Lousee, and R. Thomas.

enzo as toolroom foreman and did not communicate the refusal to the employer or its general foreman.

Parker testified that Di Lorenzo called the hall after February 20 asking if there was a work order for him. Parker told Di Lorenzo "not yet" because so many men were on the out-of-work list and he had to talk to Richards about it. Di Lorenzo called back later for an answer, and Parker told him, "No," he would not be sent out as toolroom foreman. Di Lorenzo asked who stopped his referral, and Parker responded, "Wayne" (Richards). At a later date, pursuant to Thomas' request for mechanics on the job, Di Lorenzo was dispatched as a mechanic to Stoker.[3]

Jack Sigmund testified that as superintendent for Stoker he has consistently called the hall for foremen, by name, including Di Lorenzo. Sigmund's requests have varied from foreman to toolroom foreman when requesting Di Lorenzo. In total, Di Lorenzo has been employed by Stoker on 10 different occasions and each time he worked in the toolroom for assistant foreman wages.

On February 20, Sigmund personally called Di Lorenzo to see if he was available for the Stoker job. Had Di Lorenzo not been available, Sigmund would not have been able to call for Di Lorenzo by name as a foreman. Di Lorenzo told Sigmund that he was unemployed at the time. This same day Sigmund called the hall requesting men for the Gannon job. He specifically asked for L. H. Thomas as general foreman, Di Lorenzo as toolroom foreman, and four mechanics. Each was to report to the job on February 23. When Di Lorenzo did not appear, Sigmund put Tessie Lee in the toolroom. Lee worked the first week at mechanic wages and received assistant foreman wages beginning the second week of employment. When Lee left the job in July, Di Lorenzo assumed the toolroom operation by himself and began receiving assistant foreman wages. Sigmund stated that calling for a man as foreman is the Company's right and he has always followed such a practice when naming Di Lorenzo on his work orders.

Tessie Lee testified that he won the union election in June and has been the business manager since. He informally announced his candidacy in January and talked to all the members he could seeking their support. In addition to Di Lorenzo, Lee was supported by W. Lousee, H. Barthle, Billy Barthle, and R. Thomas, among others.

In February, Lee was dispatched as a mechanic pursuant to the first work order for the Stoker job. Upon reporting to work, he was assigned to the toolroom at mechanic wages. After the first week he received assistant foreman wages remaining in the toolroom until July.

L. H. Thomas testified that he has been a union member for 22 years and the last 8 to 10 years has worked as general foreman on Stoker jobs. On February 23 he was referred to the Stoker job at Gannon as general foreman. One week later he called a work order to the union hall for Di Lorenzo for toolroom foreman. Thomas stated that the first thing he did on the Gannon job was open the toolroom and went over drawings. In April, when Di Lorenzo was referred to the job, approximately 30 mechanics were already working. The crew totaled 65 at its peak.

Richards testified that he was Respondent's business manager for 3 years. During the campaign for union office he assumed Di Lorenzo was supporting Lee, but he was never told by Di Lorenzo nor anyone else that Di Lorenzo did support Lee.

Richards knew that Di Lorenzo had been referred to the H & M Boiler job, but the referral was as steward. Richards did not personally inform Di Lorenzo of the stewardship, but assumed he knew. Richards also knew that Di Lorenzo signed the out-of-work list on February 18, but he did not have any contact with Di Lorenzo when he left the H & M Boiler job.

Richards stated that February 20 was the first time Parker had mentioned an employer's request for a toolroom foreman by name. Although Richards had not heard of a name request for a toolroom foreman before, he did know that Stoker was the only company utilizing a toolroom foreman and it consistently requested Di Lorenzo as foreman for toolroom work. Each time Di Lorenzo was referred to the job. Richards stated he did not know first hand but assumed that Di Lorenzo was receiving foreman wages since Stoker always paid foreman wages for the toolroom foreman. Richards recalled that in his 3 years as business manager less than six jobs were large enough to require a toolroom.[4] Richards admittedly told Parker on February 20, "Man, there is no way that we can set up a brand new position. I'm not opposed to the man being paid above the prevailing rate as established in our collective-bargaining agreement, but I certainly believe that we are circumventing the standards if in fact we try to form a brand new call list as tool room foreman. . . . It wasn't the practice. It just wasn't the way that we did business. Who and where was immaterial." Richards personal thoughts on referrals for tool work were "that usually that position was reserved for the handicapped, infirm or a member with special knowledge or special skills for tool room work." Richards testified, "Other than a big job, there aren't tool room people as such. We don't have any qualification. We have never established one, is what I am trying to say because of need. If it was a constant thing, we would probably add to our list, people with tool room qualifications. We would establish a new market." Richards admitted that the Stoker job in February was a rather large job.

Carl Spiers, owner of H & M Boiler Service, testified that Di Lorenzo last worked for H & M in February on the Farmland turnaround. He was hired on February 16 and worked a total of 30 hours, but left the job before it was finished. Spiers stated that Di Lorenzo was not laid off when he left and that the job continued for several more days. H & M has no record of Di Lorenzo getting a termination notice when he left the job in February, but several weeks later Di Lorenzo returned to H & M seeking a layoff notice. H & M began processing a termination notice for Di Lorenzo, but Spiers told him that

[3] It is undisputed that Di Lorenzo was placed on the out-of-work list on February 18 and was numbered 75 on such list. He was dispatched to Stoker on April 9 pursuant to his position on the out-of-work list.

[4] Respondent's business records reflected and Richards acknowledged that Di Lorenzo had been referred to five Stoker jobs, by name, as foreman, to work the toolroom from March 1979 to December 1980.

the notice would only reflect a voluntary layoff. Di Lorenzo objected, but took the partially furnished notice (no indication of nature of separation) and left.[5] Spiers did not communicate Di Lorenzo's departure to the Union until several weeks after Di Lorenzo had left the job. Spiers stated that, although his office issued the majority of termination notices, the superintendent can and has issued such notices on occasion.

Analysis and Conclusion

Parties to a collective-bargaining agreement are free to establish an exclusive hiring hall assuming it does not contain unlawful provisions on its face. The labor organization charged with operating such a hiring hall is allowed a wide range of reasonableness to serve the unit it represents but subject always to complete good faith and honesty of purpose in the exercise of any discretion. However, where referral under an exclusive hiring hall agreement is conditioned upon clear and unambiguous standards set forth in the agreement, the refusal to refer an employee who qualifies for referral under such standards, without more, suffices to establish, *prima facie*, a violation of Section 8(b)(1)(A) and (2) of the Act in the Board's view. Thus, a labor organization has been found in violation of Section 8(b)(1)(A) and (2) of the Act by refusing to refer a member, under a contractual provision which allows an employer request by name, albeit evidence that the union was motivated by a desire to encourage union membership was not present in the case.[6]

Whenever a union prevents an employee from being hired through its hiring hall, particularly if the employee was requested by name, it demonstrates absolute power to totally affect an employee's employment. Such control of employment opportunities gives rise to a presumption that the union was discriminatorily motivated in its refusal to refer. However, the presumption may be rebutted by the union showing that its actions conform to the terms of the agreement or were necessary to the effective performance of representing all its members subject to the hiring hall provisions.

The General Counsel contends that Respondent's refusal to refer Di Lorenzo is inconsistent with its established referral system, and such refusal was caused by Di Lorenzo's intraunion political activity or some arbitrary reason.

Respondent argues that its refusal to refer Di Lorenzo was based upon the clear provisions in the contract and the joint referral rules. In support thereof Respondent cites *Iron Workers Local 75 (Tyler Reinforcing)*, 232 NLRB 1194 (1977), enf. denied 583 F.2d 1094 (9th Cir. 1978), for the proposition that, where there is no exercise of discretion, the union's motive is not subject to scrutiny. Although Respondent maintains that its operation of the hiring hall was not discretionary and it was acting pursuant to mandatory terms of the contract in refusing referral, an alternative argument admits the General Counsel must show *arbitrary* or *irrelevant* reasons for the refusal to refer to constitute a violation.[7] The former position is aligned with several circuit courts wherein motivation is not a consideration, whereas the latter acknowledges the Board's view on motivation, as controlling, in assessing questionable operations of hiring halls. I am, of course, bound by the Board's view.

Respondent's refusal to refer Di Lorenzo by name to Stoker on February 20 is not in dispute. There is a factual issue surrounding the requested classification for Di Lorenzo. Stoker's superintendent, Sigmund, credibly testified that he has used the terms foreman and toolroom foreman when requesting Di Lorenzo in the past. During the last 2 years Sigmund made 10 such requests and each time Di Lorenzo was referred. Parker, the dispatcher, could not specifically recall a particular incident, but he could identify Di Lorenzo as the only member working as toolroom foreman in the last 2 years. Referral records of the Union substantiated Di Lorenzo's past referrals as toolroom foreman.[8]

Parker's purported reason for questioning the request for Di Lorenzo on February 20 is completely transparent. The terms of referral are clear and specifically allow for request by name without regard to the size of the out-of-work list or the requested member's placement on such list. Richards, when consulting with Parker, knew that Stoker consistently operates big jobs and is the only employer utilizing a toolroom and requiring a foreman to operate it. Richards also knew that on past Stoker jobs Di Lorenzo was referred as toolroom foreman, was paid foreman wages, and operated the toolroom.[9] Yet on February 20, admittedly the first time that Parker questioned a referral of Di Lorenzo as toolroom foreman, Richards denied the request on the basis that no such position (toolroom foreman) existed and that usually toolrooms were reserved for infirm, handicapped, or rehabilitating members. The protestations of both Parker and Richards are discredited as self-contradictory and totally in conflict with the bulk of the evidence. Parker's selected recall in responding to questions on redirect cast further doubt on his veracity. I conclude that both Parker and Richards discussed Stoker's request of February 20 for Di Lorenzo for reasons other than the usual eligibility requirements for referral. Albeit I cannot find on this record that Richards and Parker were motivated to refuse Di Lorenzo the requested referral because of his political activity in opposition to Richards,[10] I do con-

[5] The notice bears the date of April 7.

[6] *Asbestos Workers Local 22 (Rosendahl, Inc.)*, 212 NLRB 913 (1974).

[7] Parker's attempt to qualify Di Lorenzo's past referrals to Stoker as toolroom foreman are not consistent with the plain language of the contract or the joint referral rules. In addition, Parker exhibited a selective memory, interpreting events rather than reporting what transpired. In view of convincing evidence to the contrary and Parker's failure to impress me as a credible witness, I find most of his testimony unworthy of belief.

[8] Respondent's motion to defer the issue to the joint disputes board is denied as in my view the issues cannot be resolved on the basis of interpretation, which is the single function of the disputes board.

[9] Very possibly Stoker's requests and Di Lorenzo's referral to the toolroom resulted from the application of sec. 6.4 of the joint referral rules. (Resp. Exh. 7, p. 8.)

[10] The evidence of Di Lorenzo's political activity is not so unique or notorious that one can infer an efficacy that would require Richards to retaliate. As the record clearly shows, many members supported Richards' opponent, but union business, especially referrals, was carried on as usual, without regard for a member's intraunion political preferences. In fact, during the campaign Di Lorenzo was referred out twice (February and April).

clude and find that Richards acted arbitrary and inconsistent with the established referral procedures and the past practice thereunder. I therefore conclude and find that Respondent has not rebutted the *prima facie* case of the General Counsel, and accordingly has violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Di Lorenzo to the Stoker jobsite at Gannon on February 20.

Respondent further argues that Sigmund's request for Di Lorenzo on the Gannon jobsite was the result of a scheme between Stoker and Di Lorenzo to circumvent the hiring hall procedures. The argument is based entirely upon events which, although contemporaneous with the suspected request, were unknown to Respondent at the time it refused to refer Di Lorenzo. The record shows conclusively that Di Lorenzo was on the out-of-work list on February 18, 2 days before the request was made of Parker, thereby making Di Lorenzo (on its face) eligible for referral under the hiring hall rules. Therefore, the belated revelation of Di Lorenzo's departure from the H & M Boiler job cannot have any effect upon the prior decision of Richards not to refer Di Lorenzo. This does not mean, however, that the machinations employed by Di Lorenzo, obviously to circumvent the hiring hall rules, will remain in limbo. Had Di Lorenzo been candid with the Union about his separation from H & M Boiler, he would not have been placed on the out-of-work list. Had he not been placed on the out-of-work list, he could not have been referred to the Stoker job on February 20 as a mechanic, much less foreman.[11] Albeit the record falls short of evidencing a scheme by Stoker and Di Lorenzo to thwart the referral procedure, it does evince an attempt by Di Lorenzo to conceal the nature of his separation from the H & M Boiler job (which he had been referred to by Parker) and to wrongfully state unemployment office. Presumably, Di Lorenzo filed for unemployment insurance on February 18, 19, or 20, although he did not so testify. In any event, his return to H & M Boiler on April 7 to secure a duplicate termination slip was occasioned by his need to give such a slip to the state unemployment office. The termination slip that Di Lorenzo secured on April 7 did not go to the unemployment office, but was turned in to the union office. It is not coincidental that Di Lorenzo turned the termination slip into the Union nor is it inconsequential that he attempted to have the slip read "involuntary layoff."[12] It is obvious to me that, contrary to Di Lorenzo's testimony, he did leave the H & M Boiler job before its completion and did so to allow referral to the Stoker job contra to the referral rules.[13] Di Lorenzo continued the deception until it was necessary for the Union to have a termination slip on file to satisfy the referral rules when his place on the out-of-work list was approaching a referral. I conclude that Di Lorenzo, contrary to his testimony, intentionally and willfully circumvented the referral rules attempting to get a referral upon Sigmund's request by name for a toolroom foreman. Although not part of a scheme with Stoker, it was a plan conceived and implemented by Di Lorenzo.

Di Lorenzo has charged that Respondent's operation of its hiring hall as it applies to him personally, and specifically for a single Stoker referral in February, was a violation of the Act. I have concluded that Di Lorenzo's very eligibility for the referral of which he complains is the result of his violation of the hiring hall rules by deceit and deception. I am, therefore, constrained to lend any support to his plan. In my view, although Respondent has violated the Act in hall rules, more particularly, since his plan was unsuccessful, I do not think such a situation requires a remedy nor does the Act demand it. I conclude and find that Di Lorenzo has, by his actions, forfeited any rights he may have had to a backpay remedy.[14] I am, therefore, refusing to order a remedy for the violation found.

Additional Conclusions of Law

1. Respondent, by refusing to refer Di Lorenzo to Stoker on February 20 when requested by name as toolroom foreman, violated Section 8(b)(1)(A) and (2) of the Act.

2. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that Respondent has engaged in a certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom. I do not find it necessary that Respondent take any affirmative action other than the posting of a notice to effectuate the policies of the Act. Accordingly, I shall not order that the unfair labor practice be specifically remedied in the particular circumstances of this case.

Upon the foregoing findings of fact, conclusions of law, and on the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[15]

The Respondent, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 433, Tampa, Florida, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Riley Stoker Corporation to discriminate against Ferdinand V. Di Lorenzo, or any other employee, in violation of Section 8(a)(3) of the Act, or causing or attempting to cause any other employer to discriminate against Ferdinand V. Di Lorenzo.

[11] See Resp. Exh. 7, sec. 7.1.2, pp. 11 and 12.

[12] Spiers, a disinterested witness, credibly testified that Di Lorenzo wanted "involuntary layoff" on the slip when he actually voluntarily left the job before its completion.

[13] Di Lorenzo admittedly had advance knowledge of his referral prospects to the Stoker job at Gannon. As he stated, "We all know what jobs are about to open up."

[14] *Uniform Rental Service*, 161 NLRB 187 (1966).

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

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

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

(a) Post at its offices in Tampa, Florida, copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Additional copies of the attached notice marked "Appendix" shall be forthwith returned to the Regional Director for Region 12 for posting by Riley Stoker Corporation, if willing, at its business offices and construction projects where notices to employees are customarily posted.

(c) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[16] 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 AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT cause or attempt to cause Riley Stoker Corporation, or any other employer, to discriminate against any of its employees in violation of Section 8(a)(3) of the Act.

WE WILL NOT refuse to refer Ferdinand V. Di Lorenzo, or any other member, to his rightful employment as controlled by our collective-bargaining agreements and/or our joint referral rules.

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

WE WILL notify Riley Stoker Corporation, in writing, that we have no objection to the employment of Ferdinand V. Di Lorenzo as toolroom foreman, and shall furnish him with copies of such notification.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL UNION 433