

United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 522 (Caudle-Hyatt) and Timothy Lewis Todd. Case 11-CB-1131

28 March 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 9 December 1983 Administrative Law Judge Claude R. Wolfe issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 522, Durham, North Carolina, its officers, agents, and representatives shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

¹ The proposed "Notice to Employees" that the judge recommended will be re-entitled "Notice to Employees and Members."

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to prevent nor will we prevent members from working because they engage in protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce members in the exercise of their

rights guaranteed by Section 7 of the National Labor Relations Act, as amended.

**UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO, LOCAL 522**

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This case was tried before me on March 7, August 18, and October 31, 1983, at Plymouth and Durham, North Carolina, pursuant to charges and amended charges filed on November 1 and December 15, 1982, respectively, and complaint and amended complaints issued on December 10 and 22, 1982, respectively. The Respondent is alleged to have violated Section 8(b)(1)(A) and (2) of the Act by threatening to refuse to refer employees to work and to place them on lower positions on the out-of-work list, and by attempting to cause and causing Caudle-Hyatt, a statutory employer, to discharge Walter Barnes and Timothy Lewis Todd.

The Respondent denies it has violated the Act, and contends that Barnes and Todd circumvented a lawful, exclusive hiring arrangement in order to secure employment with Caudle-Hyatt and were therefore properly discharged at the Respondent's request.

On the entire record and my observations of the witnesses as they testified, and after careful consideration of the parties' posttrial briefs, I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The General Counsel alleges, the Respondent admits, and I find that Caudle-Hyatt, a Virginia corporation engaged at the times material to this proceeding in providing insulation service at its Plymouth, North Carolina jobsite, during a representative 12-month period received materials valued in excess of \$50,000 at said jobsite directly from points outside North Carolina, and shipped goods valued in excess of \$50,000 directly from Plymouth, North Carolina, to points outside that State. Caudle-Hyatt is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondent (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

When the events relevant to this case took place the Respondent was signatory to a labor agreement with Natkin & Company, the prime contractor on the job involved herein, or its subcontractors. The parties agree that Caudle-Hyatt was party to this agreement and that it

included an exclusive hiring hall provision reading as follows:

ARTICLE V

Referral of Employees

Section 1 The EMPLOYER shall have the unqualified right to bring in such members of supervision it considers necessary and desirable without such persons being referred by the UNIONS. The EMPLOYER shall have the right to reject an applicant referred by the UNIONS.

Section 2 The UNIONS shall accept for registration and refer all applicants for employment without discrimination against any applicant by reason of membership or non-membership in the UNION, and such referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspect or obligation of union membership policies or requirements.

Section 3 In referring applicants to the EMPLOYER the UNIONS agree to give consideration to local area residents if they are qualified. The UNIONS agree to import qualified Journeymen when local men are not available and once the men imported from outside have been employed agree to accept the EMPLOYER'S decision as to termination irrespective of whether the employee was local or imported and dependent entirely upon which are the best qualified to handle the work remaining to be done.

Section 4 In the event the referral facilities maintained by the UNIONS are unable to fill the requisitions of the EMPLOYER for employees within a forty-eight (48) hour period after such requisition is made by the EMPLOYER (Saturdays, Sundays, and holidays excepted), the EMPLOYER may employ applicants directly at the job site.

Section 5 The EMPLOYER shall be the sole judge as to the number of employees and supervisors required to perform the work and to determine how many pieces of equipment an employee shall operate or service. Employees may be shifted from one piece of equipment or operation to another as job conditions require.

In practice, employers covered by this agreement may secure union referral for specifically named employees who have previously worked for the requesting employer or its supervisor even if those employees are not the first employees eligible for referral from the Respondent's out-of-work list.

Timothy Lewis Todd and his father-in-law Walter Barnes, both union members, were employed by Natkin until they were laid off in 1982. They had been referred to Natkin by the Respondent, and Todd agrees he had been given a copy of the labor agreement containing the hiring procedure. They had never been employed by Caudle-Hyatt. Their names were placed on the Respondent's referral list, but they were still unemployed in October 1982. They had earlier become acquainted with Caudle-Hyatt's job foreman James Taylor who knew

they were out of work and seeking employment. Neither had previously worked for Taylor.

On October 19, 1982,¹ Ms. Todd and Ms. Barnes were catering lunches at the jobsite when Taylor told them that he had work for their husbands and that they had to get clearance from the Union before coming to work the following day. I credit Ms. Todd, a sincere and believable witness corroborated by her mother, Ms. Barnes, that Taylor said he would take care of it the following morning if the men could not contact the Union that night.

The women reported Taylor's statements to their husbands later that day. Barnes and Todd tried to phone James D. Rigsbee, the Respondent's business representative and financial secretary,² that night but were unable to contact him. Barnes and Todd reported to work on October 20. Taylor asked them if they had contacted the Union and cleared in to work. After they related that they had not, Taylor called the union hall and advised the office secretary, Clarice Vaught,³ that Barnes and Todd were on the jobsite and he would like to keep them but they had been unable to contact Rigsbee. Vaught advised there were 30 or so out-of-work employees waiting for referral and Rigsbee would return Taylor's call that night because he was not in the office.

Todd and Barnes worked all day on October 20. That night Rigsbee called Taylor and told him that he understood Todd and Barnes were on the job. When Taylor said they were, Rigsbee said there were a number⁴ of men "on the bench"⁵ higher on the referral list. Rigsbee continued that he would get carpenters for Taylor, but Taylor had to let Todd and Barnes go. The next morning Taylor separated them, and Rigsbee sent two others to work on October 22. There is no evidence that any carpenter but Barnes and Todd had ever been hired in the same manner without prior clearance.

After they left the job on October 21, Todd and Barnes talked to Rigsbee on the phone.⁶ Rigsbee told

¹ All dates are 1982 unless otherwise specified.

² The Respondent admitted that Rigsbee was its agent in an answer to the first complaint dated December 18, but denied his agency in answers dated December 17, 1982, and January 12, 1983. There is ample evidence in the record to satisfy the requirements of an agency finding in accord with longstanding precedent. See, e.g., *Longshoremen's ILWU Local 6 (Sunset Line Co.)*, 79 NLRB 1487 (1948).

³ I have credited Taylor that he talked to Vaught, noting that he mentioned the name Clarice to Todd and Barnes, and noting that Rigsbee concedes he became aware of the situation and called Taylor on October 20 even though he states he and Ms. Vaught were at the fair and absent from the office that day, and further noting that the evidence indicates he came to the office after 10 a.m. and his absence with Ms. Vaught commenced about 11 a.m. Taylor made his call between 8 and 9 a.m.

⁴ Taylor says Rigsbee said 30 to 40 were ahead of Barnes and Todd. Rigsbee testified that there were about 15. There is no need to resolve this conflict.

⁵ "On the bench" is a phrase denoting "out of work."

⁶ Recognizing that confusion sometimes reigns in the aftermath of bitter exchanges as to what was actually said, the account of the telephone conversation is composed of the credited portions of the testimony of the participants. Such recitations are probably colored to some extent by ill will resulting from an exchange of "cuss words" and choice epithets, but, in general, Barnes and Todd seemed more uninhibited and forthright in their testimony than Rigsbee who appeared to be carefully choosing his words to best effect rather than spontaneously responding.

Todd he had not been referred out and had jumped ahead of other men on the out-of-work list. Todd claimed Taylor had specifically called for him and Barnes. Rigsbee denied this and called Todd a liar. Todd responded by calling Rigsbee a liar. An argument ensued about the meaning of the contractual clause requiring consideration of Local men. Rigsbee explained this did not mean Local men had preference. I credit Todd that during this heated exchange Rigsbee said that if Todd kept messing around he would see that Todd never worked for anyone on the project involved. Barnes then got on the phone and received the same explanation from Rigsbee. He also got in an argument with Rigsbee during which "cuss words" were traded and Rigsbee said Barnes had broken union rules and regulations, there could be a lawsuit, and he could and would press charges against Barnes and Todd before the Union's executive board. Rigsbee added that he was going to see Barnes did not work on the project because it looked like he was stirring up trouble for the Union and the employer.

On October 30, Rigsbee called Todd and offered him referral to a job. Whether Todd accepted is not clear. The General Counsel agrees that there is no allegation of union wrongdoing after October 22.

B. Conclusions

A union may lawfully prevent the circumvention of a legitimate exclusive hiring hall.⁷ There is no evidence the hiring hall in this case is not legitimate. The General Counsel contends, however, that Todd and Barnes had made good-faith efforts to contact Rigsbee and thereby secure referral through the hiring hall, had not circumvented or attempted to circumvent the hiring procedures, and that the Union's action in causing the employer to discharge them violated the Act, relying on *Stage Employees IATSE Local 7*, above. In that case that the Board found the respondent union violated Section 8(b)(2) of the Act by refusing to refer two employees who had made repeated good-faith efforts to contact the business agent for referral and did not attempt to work when they visited the jobsite. The Board found no circumvention or attempt to circumvent the hiring hall procedures, no evidence that hiring the two men would disrupt the usual determination of employee referral, and further found that the employer generally was provided with specific employees it requested through the hiring hall and had specifically requested those two men. In the instant case there is no reason to find that the efforts of Todd and Barnes to reach Rigsbee prior to starting work were not in good faith. These efforts, the fact they had previously been referred by the Union, Taylor's message that they should secure union clearance, and Todd's familiarity with the labor agreement, show, however, that they were aware of the need to secure referral prior to starting work. They did in fact go to work without a referral, thereby "jumping over" other unemployed persons ahead of them on the referral list, and effectively circumvented the hiring hall. The plain fact they did cir-

cumvent the hiring hall, albeit with the assistance of Taylor, is not affected by their apparent good faith. If I were to hold otherwise, any out-of-work employee could easily circumvent the lawfully established procedures by simply going to work at the employer's request when initial efforts to contact the union for referral were unsuccessful. This would obviously disrupt, as the action of Todd and Barnes in going to work without a referral did, the usual determination of employee referral. There is no evidence that the company or any other employer using the hall ever was supplied with men specifically requested other than those who had previously worked for that employer or its supervisors. Accordingly, I conclude that the above-cited case relied on by the General Counsel is clearly distinguishable and not applicable to the situation at hand.

The action of Rigsbee in causing the discharge of Todd and Barnes was a reasonable action designed to prevent circumvention of a legitimate exclusive hiring hall. There is no evidence of any unlawful motive for the action nor any departure from past practice or express contractual provisions. I find the Respondent by causing the discharge of Todd and Barnes did not violate Section 8(b)(2) of the Act.⁸

With respect to the October 21 conversations between Todd, Barnes, and Rigsbee I find that Todd and Barnes were engaged in the protected concerted activity of protesting the operation of the referral system. It is axiomatic that such protests need not be correct to be protected.⁹ When Rigsbee threatened Todd and Barnes with action designed to keep them from ever working on the project again he was engaging in conduct which reasonably tended to restrain and coerce them in the exercise of their statutory right to engage in protected concerted activity and therefore violated Section 8(b)(1)(A) of the Act. His statement that both had violated internal union rules and regulations and that he could and would press internal union charges against them amounts to nothing more than a threat to charge them for a violation of section 25 of the Local bylaws providing that all referrals must be through the business representative and any member who works without permission of the business representative is subject to a fine. It is not alleged nor do I find that such a statement violates the Act. The additional remark of Rigsbee that there could be a lawsuit is naught but an innocuous statement of Rigsbee's opinion and is not unlawful.¹⁰

CONCLUSIONS OF LAW

1. Caudle-Hyatt is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By threatening employees that it would prevent them from working because they engaged in protected concerted activity, the Respondent violated Section 8(b)(1)(A) of the Act.

⁸ Compare *Boilermakers Local Lodge 40*, 266 NLRB 432 (1983).

⁹ See, e.g., *Robert Martin Construction Co.*, 214 NLRB 429 (1974).

¹⁰ *Auto Workers Local 111 (Wheel Horse Products)*, 248 NLRB 1013 (1980).

⁷ *Boilermakers Local Lodge 40 (Envirotech Corp.)*, 266 NLRB 432 (1983); *Stage Employees IATSE Local 7*, 254 NLRB 1139 (1981).

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

5. The Respondent did not violate Section 8(b)(2) of the Act as the complaint alleges.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Durham, North Carolina, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees that they will be kept from working because they engage in protected concerted activity.

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

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act.

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its business office, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."¹² Copies of said notice, on forms provided by the Regional Director for Region 11, after being signed by an authorized representative of the Union, shall, be posted immediately upon receipt and maintained for 60 days. Reasonable steps shall be taken by the Union to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 11 signed copies of said notice in sufficient number for posting by Caudle-Hyatt if said employer is willing to so post.

(c) Notify the Regional Director in writing with 20 days of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not found herein.

¹² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."