

International Brotherhood of Electrical Workers, Local 11, AFL-CIO (Los Angeles County Chapter of the National Electrical Contractors Association) and Vincent J. Sokol and William G. Mott and Steven R. Loveall. Cases 31-CB-5035, 31-CB-5038, and 31-CB-5047

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

On 31 October 1983 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel and the Charging Parties filed exceptions and supporting briefs, and the Respondent filed a brief in opposition to their exceptions.

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,¹ findings,² and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent did not violate the Act by denying the Charging Parties' requests to sign its out-of-work list for group I referral. For the reasons set forth below, we find merit to the General Counsel's and the Charging Parties' exceptions to this finding.

The relevant facts here are as follows: the Respondent and the Los Angeles County Chapter of the National Electrical Contractors Association (NECA) have entered into a succession of collective-bargaining agreements covering electrical workers. Pursuant to these contracts, the Respondent has maintained and administered an exclusive hiring hall to refer applicants for employment to the various employer-members of NECA. The collective-bargaining agreement in effect at all relevant times herein expired 31 May 1983 and, immediately thereafter, the Respondent and NECA executed another contract with the same referral provisions.

¹ Based on our disposition of this case, we find it unnecessary to pass on whether the judge properly granted the Respondent's motion to revoke the subpoena for certain hiring hall records which the General Counsel was seeking.

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

The agreement has certain classifications consisting of several groups of applicants for referral. Thus, persons assigned to group I receive preference to available work over all other applicants. Persons in Group II are preferred over those in group III and so forth. The criteria for assignment to the various groups is set forth in section 4.05(b) of the contract as follows:³

Journeyman Wireman

Group I. All applicants for employment who have four or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a journeyman wireman's examination given by a duly constituted Inside Construction Local Union of the IBEW or have been certified as a journeyman wireman by any Inside Joint Apprenticeship and Training Committee and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this agreement.

Group II. All applicants for employment who have four or more years' experience in the trade and have passed a journeyman wireman's examination given by a duly constituted Inside Construction Local Union of the IBEW or have been certified as a journeyman wireman by any Inside Joint Apprenticeship and Training Committee.

Group III. All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this agreement.

Group IV. All applicants for employment who have worked at the trade for more than one year.

Additionally, section 4.09 defines "[r]esident" to mean:

... a person who has maintained his *permanent home* in the [Los Angeles County] geographical area for a period of not less than one year or who, having a *permanent home* in this area, has temporarily left with the intention of returning to this area as his *permanent home*.

The Charging Parties are "travelers" who are members of IBEW locals other than the Respond-

³ The complaint does not allege, and the General Counsel does not contend, that the referral system described in the contract is unlawful.

ent. Steven Loveall moved to Los Angeles County in December 1979; Vincent Sokol in August or September 1980; and William Mott in May 1981. They have continuously resided within the Respondent's territorial jurisdiction since their arrivals. Because the Charging Parties had passed the journeyman wireman's examination and had worked for at least 4 years in the trade, they were eligible for group II referral upon registering for work at the Respondent's hiring hall. By November 1982 each of them had accumulated more than 2000 hours working for employers who are signatories to the Respondent's contract.⁴

It is undisputed that beginning in early 1982⁵ there was a severe downturn in the construction industry, which continued for at least the next year. This situation resulted in widespread unemployment among the Respondent's members. Its business manager Earl Higgins admitted that members of the Local frequently complained about travelers working while they were unemployed. During a union meeting, Stephen Harrington, the Respondent's president, informed the membership that he was investigating the possibility of filing intraunion charges against 376 travelers who were taking jobs from them.

Because of economic conditions, the Charging Parties were laid off their jobs during the fall of 1982. When, in anticipation of his imminent unemployment, Mott sought advancement to group I status, Dean Frazier, one of the Respondent's business agents under Higgins, replied that Mott never would attain such status because he was a traveler.⁶ Loveall also asked Frazier about the eligibility requirements for signing the group I referral book. Frazier replied that Loveall "probably wouldn't be able to get on Book I," but suggested that he contact the Respondent's executive board about this matter. Loveall subsequently discussed the subject with Higgins. After Higgins said that applicants must have worked for 4000 hours under the Respondent's contract in order to qualify for group I, Loveall pointed out that the contract specifically required only 1 year's work (2000 hours) to attain that status. Higgins responded that the provision Loveall was referring to applied only to applicants who previously had qualified for group I. Either Frazier or Ted Hill, another union official, eventually confided to Loveall that he would never sign book I because he was a traveler.

Since the Respondent refused to allow them to register for group I referral, the Charging Parties

separately appealed to the three-member appeals committee established by the contract to decide any complaints arising from the Respondent's operation of the hiring hall. This committee is composed of Higgins, the NECA chapter manager, and a public member whom the parties jointly select. On 4 March 1983 the appeals committee denied the Charging Parties' claims for group I status on grounds that they failed to "meet either the residency standards or the number of hours worked, as required."

The Board has held that a union which operates an exclusive hiring hall must represent all individuals who seek to utilize the hall in a fair and impartial manner.⁷ The labor organization conducting such an operation has a duty to conform with and apply lawful contractual standards in administering the referral system, and any departure from the established procedures resulting in a denial of employment constitutes discrimination which inherently encourages union membership. This discrimination constitutes a violation of Section 8(b)(1)(A) and (2) of the Act.⁸

In finding no violation here, the judge concluded that the definition of "resident" in section 4.09 of the contract introduces a substantial element of ambiguity into the hiring hall procedures and requires that meaning be given to the words "permanent home." The judge found, based, inter alia, on the credited testimony of Higgins and Willard Bretz, NECA's chapter manager, that the parties have interpreted "permanent home" to require both 3 years' residency in Los Angeles County and 4000 hours employment under the local contract. Although noting that the Respondent never has published these requirements, the judge concluded that they have been in existence for many years. He emphasized that, while the 3-year residency requirement is somewhat flexible, it is mandatory that group I applicants have accumulated 4000 hours working for signatory employers. Accordingly, since none of the Charging Parties has fulfilled the latter requirement, the judge dismissed the 8(b)(1)(A) and (2) allegations of the complaint.

Contrary to the judge, we conclude that the term "resident" is sufficiently well defined in the contract as to outweigh any probative value the extrinsic evidence may have. As stated, section 4.09 defines resident as "a person who has maintained his *permanent home* in the [Los Angeles County] geographical area for a period of not less than one year." It is well settled that the Board has author-

⁴ The Respondent considers 2000 hours to be the equivalent of 1 year's work.

⁵ All dates hereinafter are 1982 unless otherwise noted.

⁶ Frazier did not testify in this case.

⁷ *Plumbers Local 725 (Powers Regulator)*, 225 NLRB 138, 143 (1976).

⁸ *Id.* at 143; *Operating Engineers Local 513 (S. J. Groves & Sons)*, 199 NLRB 921, 922 (1972).

ity to interpret collective-bargaining agreements in the course of deciding unfair labor practice cases.⁹ We find that the contractual language of section 4.09 clearly and unambiguously states that the applicant must have maintained his permanent home in Los Angeles County for at least 1 year. In this situation the contract speaks for itself and thus it is unnecessary, contrary to the judge's finding, to give additional meaning to its terms.

In applying the contractual definition of "resident" to the facts here, we initially note that all the alleged discriminatees had lived in Los Angeles County for at least 18 months before the Respondent denied their requests for group I status. The record further shows that during this period the Charging Parties registered to vote in Los Angeles County, obtained California driver's licenses, registered their motor vehicles there, and enrolled their children in local schools. Based on this evidence, we find that these individuals have maintained their "permanent home[s]" in Los Angeles County for at least 1 year as the contract requires. It also is evident, as noted, that before they moved to Los Angeles County all the alleged discriminatees had passed the journeyman wireman's examination and had worked for at least 4 years in the electrical trade, and that by the time they inquired about group I status each of them had accumulated 2000 hours of work under the Respondent's collective-bargaining agreement. Accordingly, we find that Loveall, Mott, and Sokol clearly satisfied the contractual requirements for group I referral.

The judge, however, adopted the Respondent's interpretation of section 4.09 as compelling 4000 hours work under the local agreement. Yet, the contract itself explicitly states that only 1 year of such work is required. It seems inconceivable that the Respondent and NECA would have included that provision if they had intended, as the judge found, to impose a different standard. Although Higgins told Loveall that the 1-year requirement applied only to applicants who were seeking to retain their group I status, Higgins' explanation for this discrepancy is unconvincing since the contractual language clearly does not make such a distinction. We therefore conclude that the Respondent has departed from its established procedures and has unlawfully denied the Charging Parties access to the group I referral book.¹⁰

While the Board has held that evidence of the union's motivation is not a prerequisite to a finding of discrimination, this record clearly demonstrates the Respondent's animus towards travelers who

were working or attempting to find work in its jurisdiction during high unemployment. The Respondent simply was doing everything possible to ensure that its members filled those few jobs which were available. Thus, the Respondent's president told the membership in response to their complaints on this subject that the Respondent was investigating the possibility of filing intraunion charges against travelers who were continuing to work in Los Angeles County. Other union officials informed Loveall and Mott that they never would be allowed to register in book I because they were travelers. Against this background of hostility, the Respondent's imposition of more stringent requirements for attaining group I status than set forth in the contract establishes that it was promoting job opportunities for its members to the detriment of other applicants using the hiring hall.

Furthermore, even assuming that these requirements were legitimate, the Respondent has, in any event, violated Section 8(b)(1)(A) and (2) of the Act because the Respondent has not complied with its statutory duty to give applicants for employment adequate notice of its hiring hall procedures. By the Respondent's own admission there were no written rules stating that applicants needed to work 4000 hours under the local contract to attain group I status nor was this requirement posted in any of the hiring halls which the Respondent operates. In fact, the Respondent, through Dean Frazier, its business manager at the hiring hall where Loveall and Mott sought group I referral, never even informed Loveall and Mott verbally that they would be rejected for this reason. The Respondent's failure to give timely notice of substantial changes in its referral procedures was arbitrary and in breach of its duty to keep applicants informed about matters critical to their employment status.¹¹

For all of these reasons, we conclude that the Respondent has not offered any valid justification for failing to operate the referral system in the manner prescribed by its collective-bargaining agreement with NECA. Accordingly, we find that by engaging in such conduct the Respondent has discriminated against Charging Parties Loveall, Mott, and Sokol in violation of Section 8(b)(1)(A) and (2) of the Act.¹²

¹¹ See, e.g., *Plumbers Local 392 (Kaiser Engineers)*, 252 NLRB 417, 421 (1980).

¹² Contrary to the judge, we find that the present situation clearly is distinguishable from *Electrical Workers IBEW Local 592 (United Engineers)*, 223 NLRB 899 (1976). In that case it was found that the union operated its hiring hall in a manner sufficient to apprise all registrants of practices which were not set forth in the contract. Here, it is clear that the Charging Parties could not have known of the additional requirements the Respondent was imposing on applicants to qualify for group I referral.

⁹ *NLRB v. C & C Plywood Corp.*, 385 U.S. 421, 428 (1967).

¹⁰ See *Asbestos Workers Local 22 (Rosendahl, Inc.)*, 212 NLRB 913 (1974).

THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Having found that the Respondent unlawfully failed and refused to refer for employment applicants Steven R. Loveall, William G. Mott, and Vincent J. Sokol in the manner prescribed by its collective-bargaining agreement with the Los Angeles County Chapter of the National Electrical Contractors Association, we shall order that the Respondent make them whole for any loss of earnings and other benefits resulting from the Respondent's discrimination in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), together with interest as provided in *Florida Steel Corp.*, 231 NLRB 651 (1977).¹³

CONCLUSIONS OF LAW

1. Los Angeles County Chapter of the National Electrical Contractors Association is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 11, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent and the Employer have been parties to a succession of collective-bargaining agreements whereby the Respondent operates an exclusive hiring hall for the referral of employees by the Respondent to employer-members of the Los Angeles County Chapter of the National Electrical Contractors Association.

4. By failing and refusing to refer for employment applicants Steven R. Loveall, William G. Mott, and Vincent J. Sokol in the manner prescribed by its collective-bargaining agreement with the Los Angeles County Chapter of the National Electrical Contractors Association, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of

Electrical Workers, Local 11, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to refer applicants for employment in accordance with the hiring hall practices and procedures set forth in its collective-bargaining agreement with the Los Angeles County Chapter of the National Electrical Contractors Association.

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

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

(a) Operate its exclusive hiring hall in accordance with the practices and procedures set forth in its collective-bargaining agreement with the Los Angeles County Chapter of the National Electrical Contractors Association.

(b) Refer Steven R. Loveall, William G. Mott, Vincent J. Sokol, and all other applicants for employment, to positions for which they are entitled under this contract.

(c) Make whole Steven R. Loveall, William G. Mott, and Vincent J. Sokol for any loss of earnings and other benefits resulting from the Respondent's discrimination against them, in the manner prescribed in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all hiring hall records, reports, work lists, and other documents necessary to analyze and compute the amounts of backpay due under the terms of this Order.

(e) Post at all places where notices to employees, applicants for referral, and members are posted copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

¹⁴ 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."

¹³ See generally *Ivis Plumbing Co.*, 138 NLRB 716 (1962).

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to refer applicants for employment in accordance with the hiring hall practices and procedures set forth in our collective-bargaining agreement with the Los Angeles County Chapter of the National Electrical Contractors Association.

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

WE WILL operate our exclusive hiring hall in accordance with the practices and procedures set forth in our collective-bargaining agreement with the Los Angeles County Chapter of the National Electrical Contractors Association.

WE WILL refer Steven R. Loveall, William G. Mott, and Vincent J. Sokol, and all other applicants for employment, to positions for which they are entitled under this contract.

WE WILL make whole Steven R. Loveall, William G. Mott, and Vincent J. Sokol for any loss of earnings and other benefits resulting from our discrimination against them, less any net interim earnings, plus interest.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 11,
AFL-CIO

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Los Angeles, California, on August 9 and 10, 1983. The charges in Cases 31-CB-5035, 31-CB-5038, and 31-CB-5047 were filed on April 13, 14, and 25, respectively, by Vincent J. Sokol, William

G. Mott, and Steven R. Loveall, respectively (herein called the Charging Parties).

Thereafter, on May 6, 1983, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing alleging a violation by International Brotherhood of Electrical Workers, Local 11, AFL-CIO (Respondent) of Section 8(b)(2) of the National Labor Relations Act (the Act). The complaint was amended at the hearing.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel, counsel for Respondent, and counsel for the Charging Parties.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The National Electrical Contractors Association, herein NECA, is an organization comprised of employers engaged in electrical contracting 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 Respondent. The employer-members of NECA, collectively, annually purchase and receive in the State of California goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California.

It is admitted, and I find, that the employer-members of NECA, collectively, are employers engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The principal issue raised by the pleadings is whether Respondent unlawfully denied the Charging Parties' request to sign Respondent's out-of-work list for group I referral in violation of Section 8(b)(2) of the Act.

B. *The Facts*

NECA and Respondent have been parties to a succession of collective-bargaining agreements, entitled "Inside Wiremen's Agreement," covering wages, hours, and other terms and conditions of employment of certain electrical employees. The agreement in effect at times herein extended from July 22, 1981, through May 31,

1983.¹ Pursuant to this agreement, Respondent has maintained and administered an exclusive hiring system or procedure and exercises exclusive authority to refer employees to the various employer-members of NECA.

The contract provisions applicable to this case are as follows:

ARTICLE IV REFERRAL PROCEDURE

Sec. 4.01. In the interest of maintaining an efficient system of production in the Industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area and of eliminating discrimination in employment because of membership or non-membership in the Union, the parties hereto agree to the following system of referral of applicants for employment.

Sec. 4.02. The Union shall be the sole and exclusive source of referral of applicants for employment.

Sec. 4.03. The Employer shall have the right to reject any applicant for employment.

Sec. 4.04. The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and such selection and referral shall not be affected in any way by rules, regulations, bylaws, constitutional provisions of any other aspect or obligation of Union membership policies or requirements. All such selection and referral shall be in accord with the following procedure.

Sec. 4.05.(a) The Union shall maintain a register of applicants for employment established on the basis of the Groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he qualifies.

(b) It will not be mandatory for an employee to accept transfer to a dispatch area other than the one he was dispatched to.

Journeyman Wireman

Group I. All applicants for employment who have four or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a journeyman wireman's examination given by a duly constituted Inside Construction Local Union of the IBEW or have been certified as a journeyman wireman by any Inside Joint Apprenticeship and Training Committee and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this agreement.

Group II. All applicants for employment who have four or more years' experience in the trade

and have passed a journeyman wireman's examination given by a duly constituted Inside Construction Local Union of the IBEW or have been certified as a journeyman wireman by any Inside Joint Apprenticeship and Training Committee.

Group III. All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this agreement.

Sec. 4.09. "Resident" means a person who has maintained his *permanent home* in the above defined geographical area for a period of not less than one year or who, having a *permanent home* in this area, has temporarily left with the intention of returning to this area as his *permanent home*.

The Charging Parties are not members of Respondent, but are members of other locals of the IBEW. For a period of time each of the Charging Parties has worked within Respondent's geographical jurisdiction as a "traveler," having the qualifications to sign and be referred for employment from the group II register, supra, which has no residency provision.

In February 1983, the Charging Parties were denied permission by Respondent to sign the group I register or out-of-work list, which is the highest priority list. About March 4, 1983, their respective appeals of this determination were likewise denied, in writing, by Respondent's Appeals Committee. The three-member Appeals Committee is established by the contract, and is empowered to hear complaints arising out of the contract referral procedure. It is comprised of one member appointed by Respondent, one member appointed by NECA, and a public member appointed by both Respondent and NECA. The contract specifies that the Appeals Committee "is not authorized to add to, subtract from, or modify any of the provisions of this agreement and its decisions shall be in accord with this agreement." The Appeals Committee consists of Earl Higgins, Respondent's business manager, Willard Bretz, NECA chapter manager, and public member Julius Draznin.

Earl Higgins, called as a witness by the General Counsel, has been business manager for Respondent since 1973. Higgins testified that none of the Charging Parties meet the qualifications for admission to group I. He explained that for eligibility to group I applicants must have been residents of Los Angeles County, Respondent's geographical jurisdiction, for 3 years, with certain exceptions noted below; must have accrued 4000 hours of working time under the terms of the contract with a signatory employer;² and must have passed a journey-

¹ A successor agreement is currently in effect with no change in contract language as set forth infra.

² A year is the equivalent of 2080 hours, and it would take at least 2 years of steady work to accumulate 4000 hours. The employees' hours are maintained by the office of the Southern California IBEW-NECA Trust Funds, rather than by Respondent.

man wireman's examination. Although there are no written rules in existence detailing these requirements, nor are they posted at any of Respondent's hiring halls, Higgins testified that they have been in existence since 1964, and have been consistently applied. However, he further stated that possibly on four or five occasions various business representatives who are initially responsible for making such determinations have mistakenly permitted individuals to sign the group I list without having first accrued the mandatory 4000 hours, but that when the mistakes were discovered the individuals were relegated to the proper group. In case of doubt regarding an individual's admission to group I, the business agents are to refer the matter to Higgins.

Regarding the contract language that a group I applicant for employment must "have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this agreement," Higgins testified that that particular language constituted a requirement for maintenance of group I status after first qualifying for and belonging to group I, but was not the requirement for initial admission to group I.

In this regard, Charging Party Loveall testified that, in a discussion with Higgins, Higgins explained that he did not believe Loveall met the 4000-hour requirement. Loveall apparently argued that the contract did not require 4000 hours, but rather only 1 year, the equivalent of 2000 hours. Higgins replied, according to Loveall, that the particular contract language did not pertain to Loveall, but was "for local hands only." Higgins specifically denied that he made this statement to Loveall, but, as aforementioned, he did in effect tell him that the language did not pertain to him as it only applied to individuals who had previously acquired group I status. I credit Higgins, who appeared to be a very knowledgeable and forthright witness.

Willard Bretz is chapter manager for NECA, and he serves on the Appeals Committee, along with Higgins and the public member Julius Draznin. Bretz testified that to his knowledge there had never been an Appeals Committee meeting until about March 1982, as no individual had ever appealed the determination of the business managers regarding referrals, and that his research in preparing for the various appeals failed to uncover any rules or records of previous appeal. Bretz testified that "permanent home" within the meaning of section 4.09 of the agreement was interpreted to be the equivalent of 3 years' continuous residency, but that this requirement would be shortened somewhat if the individual provided convincing evidence that Respondent's geographic area was indeed his permanent residence. Particularly, the purchase of a home constituted substantial evidence of this.

Bretz testified that he had no knowledge of Respondent's internal policy regarding the requirements for group I, as he had no involvement with the referral process until the appeals stage. However, he testified that the 3-year residency rule was adopted by the Appeals Committee some 18 months to 2 years prior to the instant hearing, and was established by the Committee when the first appeal was made. Further, Bretz testified

that the 4000 hour requirement was a concomitant of the residency requirement as "4000-hours would again show the permanence of their employment here." Higgins testified similarly regarding the correlation between the 4000 hour requirement and the residency requirement.

In preparation for the anticipated influx of appeals, apparently due to the fact that an inordinate number of unemployed travelers were in the area, a residency questionnaire was prepared by the Appeals Committee. The questionnaire requests detailed information regarding the individual's residency in the area, including such matters as where he pays taxes, whether he registered to vote, where his children attend schools, where his vehicles are registered, where he maintains bank accounts or investments, and whether he owns a home. The questionnaire also asks, "Have you lived in Los Angeles County for a period of (3) years?"

In an effort to attempt to establish that Respondent did not have a 3-year/4000-hour residency requirement, the General Counsel subpoenaed Respondent's records from January 1982 to the present which would show the number of hours worked and the place of residence in the 3 years prior to their signing group I of all individuals who advanced from group III to group I. I granted Respondent's motion to revoke the subpoena for the reasons stated on the record as follows:

I have heard your various arguments, both on and off the record, on the subpoena issue, namely Items 14 and 15 of the subpoena issued by the General Counsel.

The subpoena and the motion to revoke should be made a part of the record and they will at the appropriate time.³

Respondent's petition to revoke is granted for the following reasons: neither the General Counsel nor the Charging Party have produced any reliable evidence that the standards nor admission to Book 1⁴ are other than as stated by Mr. Higgins and Mr. Bretz, the NECA chapter manager. Rather the contentions of the General Counsel and the Charging Party regarding admission to Book 1 are based on speculation and unreliable hearsay.

Two, it appears from the representation of Respondent's counsel that the records are not readily available in a meaningful form, but would have to be compiled from a variety of documents requiring a substantial amount of time.

Three, it appears that after listening to arguments of the parties, extensive arguments, that even if certain records on their face did support the contention of the General Counsel and the Charging Party, those particular individuals corresponding to the records would need to be called as witnesses in any event to verify the accuracy of the records, and perhaps to be called upon to testify to extenuating circumstances regarding their admission to Book 1, thus potentially leading to extensive and protracted

³ Both the subpoena duces tecum and Respondent's motion to revoke are hereby made a part of the record.

⁴ Book I and group I are customarily used interchangeably.

collateral litigation involving whether or not the admission requirements involved herein were systematically applied to the individuals, and the underlying reasons for any incorrect application or deviation from the requirements.

I specifically refer to the matter of Mr. Ronald Benson whose testimony has resulted in contrary contentions regarding the proper application of the residency requirement, Mr. Benson not being a party to this proceeding.

Lastly, no precedent or cases have been cited to me supporting the positions of the General Counsel or the Charging Party regarding the subpoenaed documents. For those particular reasons, I am granting the petition to revoke. There are various avenues that the parties may take.

Now that we've had extensive argument on this, I don't think that there's any further argument needed, and you can take any avenue of appeals that you wish to do so. I shall adhere to this particular ruling throughout the remainder of the proceeding, and I will not hear any more argument or evidence with regard to hearsay evidence regarding the incorrect application of the admission requirements to Book 1.

Further, following my ruling on the subpoena, the Charging Parties' counsel read a list of five names and stated it was the Charging Parties' belief that each of the named individuals obtained group I status at a time when they had accrued substantially less than 4000 hours. None of these individuals were called as witnesses to substantiate this contention.

C. Analysis and Conclusions

The General Counsel and Charging Parties maintain that the referral procedure for group I established by the contract is clear and unambiguous, and therefore Respondent has violated the Act by failure to apply such provisions to the Charging Parties. *Electrical Workers IBEW Local 592 (United Engineers)*, 223 NLRB 899 (1976).

Contrary to such contentions, while it first appears from a reading of article IV, section 4.05, of the contract that the requirements for group I are rather simple and explicit, reference to the definition of "resident," at article 4.09 of the contract, introduces a substantial element of ambiguity, and requires that meaning be given to the words "permanent home." According to the testimony of

Higgins and Bretz, a residency period, which has been interpreted to mean a period during which the individual has resided within Respondent's geographical jurisdiction for a period of 3 years, establishes the area as the applicant's permanent home. Concomitantly, it is assumed that within such a period of time the individual should be able to accrue 4000 hours working for signatory contractors. Thus, group I status has been interpreted to require both a residency period of 3 years and 4000 hours of work for signatory employers, the latter requirement operating as a positive indication that the individual did indeed intend to make the area his permanent home. According to Higgins, whom I credit, the 3-year requirement is somewhat flexible, while the 4000 hour requirement is a hard and fast rule.

Certainly, more explicit contract language would readily apprise individuals of the foregoing requirements for group I status, and would have obviated the necessity for the instant hearing. However, I credit the testimony of Higgins and find, particularly in the absence of any persuasive contrary evidence,⁵ that these requirements, although unpublished, have been in existence and have been routinely applied for an extended period of time and have established the past practice by which individuals have attained their group I status. Further, the fact that Higgins and perhaps other officials of Respondent have indicated their antipathy to travelers when union members are out of work is insufficient to establish that the group I requirements are not as Higgins testified.

On the basis of the foregoing, I shall dismiss the case in its entirety. *Electrical Workers IBEW Local 592 (United Engineers)*, supra.

CONCLUSIONS OF LAW

1. The employer-members of the National Electrical Contractors Association are employers engaged in commerce and in an industry affecting commerce within the meaning of Section 2(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. The Respondent has not violated the Act as alleged. [Recommended Order for dismissal omitted from publication.]

⁵ The General Counsel and counsel for the Charging Parties maintain that the testimony of Higgins and Bretz is inconsistent and contradictory. It appears that any variation in their testimony is a result of incomplete or ambiguous record evidence, coupled with the fact that Bretz does not deal with the referral procedure on a day-to-day basis as does Higgins. I credit the testimony of both Bretz and Higgins.