

**Development Consultants, Inc. and Gary Wall
Laborers' Local Union No. 230, Laborers' Inter-
national Union of North America (Development
Consultants, Inc.) and Gary R. Wall
Laborers' Local Union No. 230, Laborers' Inter-
national Union of North America (The Ceco
Corporation) and William Cooksey, Jr.
Laborers' Local Union No. 230, Laborers' Inter-
national Union of North America and Joseph
A. DiLoreto and William Cooksey, Sr. and
John Fish.** Cases 39-CA-3046, 39-CB-827, 39-
CB-833, 39-CB-840, 39-CB-858, and 39-CB-
860

October 15, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On July 28, 1988, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondents filed exceptions and supporting briefs, and the General Counsel filed cross-exceptions. Thereafter, the General Counsel filed a reply brief and Respondent Development Consultants, Inc. (DCI) filed a brief in opposition to the General Counsel's cross-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 the briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified and to adopt the recommended Order as modified and set out in full below.

The judge found that the Union violated Section 8(b)(2) by attempting to cause the termination of Charging Party Wall by DCI and by causing DCI to refuse to recall Wall from layoff in retaliation for his exercise of protected activities. The judge further found that DCI violated Section 8(a)(3) and (1) by failing and refusing to recall Wall from layoff pursuant to the unlawful request of the Union. Although we adopt the judge's findings concerning these violations, we reverse his finding that Wall's February 7, 1986 layoff resulted from unlawful actions on the part of the Union and DCI. Rather, we find that the evidence establishes that the entire crew of laborers, including Wall, was laid off for a legitimate business reason, the lack of work. We shall amend the Order to reflect our finding.

¹The Union has 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 evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1930), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge also found that the Union violated Section 8(b)(2) and (1)(A) by operating an exclusive hiring hall without objective criteria or standards for referral and by discriminatorily refusing to refer Charging Parties Wall, DiLoreto, Cooksey Sr., and Cooksey Jr. Although we agree with the judge that the Union violated the Act by discriminatorily refusing to refer Wall,² DiLoreto, Cooksey Sr., and Cooksey Jr., we find that the evidence does not support the judge's conclusions that the Union operated an exclusive hiring hall.

In finding that the Union operated an exclusive hiring hall, the judge interpreted the language set forth in the Union's collective-bargaining agreements with various contractors. That language states:

The local union having jurisdiction shall be recognized as the principal source of laborers and shall be given the first opportunity to refer qualified applicants for employment. The Employer shall be the sole judge to whether or not the men furnished are qualified. The Employer reserves the right to transfer or rehire laborers, provided that for those laborers rehired, the Employer shall notify the Union of the rehiring within forty-eight (48) hours of the date of rehiring.

Rejecting the argument that this language was ambiguous concerning whether the Union operated an exclusive hiring hall, the judge determined that the language mandated that the contractors look first to the Union's hiring hall when seeking to hire laborers on a job. The judge further found that the parties' practices did not compel a different conclusion. Although acknowledging that contractors that were parties to the agreement with the Union had hired laborers without seeking referrals from the Union's hiring hall, the judge determined that such instances established only a limited practice and did not detract from the conclusion that the Union could enforce its contractual right to operate an exclusive hiring hall.

Contrary to the judge, we do not find that the above language necessarily establishes that the Union operates an exclusive hiring hall. Rather, we find that the language is also subject to the interpretation that the Union urges—that is, that the provision requires only that the local union having territorial jurisdiction of the jobsite has the first opportunity to refer applicants when the contractor decides to use the hiring hall. As we find that the contractual language does not require contractors to use the hiring hall exclusively, we next consider whether the parties' practices nonetheless established an exclusive referral system. In light of the testimony of several contractors that they have hired

²In adopting the judge's finding that Wall was unlawfully denied referrals, we do not rely on his unsupported finding that when Wall registered for referral in September 1986 he did not receive a referral for a month.

laborers without using the hiring hall and without objection from the Union, we do not find that an exclusive referral system existed by practice. Consequently, we find that the General Counsel has not met his burden of establishing by a preponderance of the evidence that the Union operated an exclusive hiring hall system. In light of our finding that the hiring hall was not exclusive, we find that the Union's discriminatory refusals to refer members Wall, DiLoreto, Cooksey Sr., and Cooksey Jr. violated Section 8(b)(1)(A), but not Section 8(b)(2). See *Laborers Local 135 (Bechtel Corp.)*, 271 NLRB 777, 780 (1984); *Plasterers Local 121 (ABC of Lafayette)*, 264 NLRB 192, 195 (1982). Moreover, absent an exclusive hiring hall arrangement, we find no 8(b)(1)(A) violation for the Union's failure to operate its hiring hall in accordance with objective criteria. See *Teamsters Local 460 (Superior Asphalt)*, 300 NLRB 441 (1990).

AMENDED REMEDY

Having found that Respondent Union and Respondent Development Consultants, Inc. have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent Union has violated Section 8(b)(2) by attempting to cause DCI to terminate Wall and by causing DCI to refuse to recall Wall from layoff, and we have found that Respondent DCI has violated Section 8(a)(3) and (1) by failing and refusing to recall Wall from layoff at its Northeast Plaza jobsite pursuant to the unlawful request of the Union. In order to remedy this unlawful conduct, we shall order DCI to offer Wall reinstatement and, jointly and separately with the Union, make him whole for any loss of earnings and other benefits he may have suffered as a result of the discrimination against him from the date of the Respondents' unlawful conduct until the date he obtains the employment he would have had were it not for the Respondents' unlawful conduct, substantially equivalent employment with Respondent DCI, or substantially equivalent employment elsewhere, less net interim earnings.

We have further found that the Union violated Section 8(b)(1)(A) by unlawfully denying referrals to Wall, William Cooksey Sr., William Cooksey Jr., and Joseph DiLoreto. In order to remedy this unlawful conduct, we shall order the Union to make them whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them from the date of the discrimination against them until the date that the Union has properly referred them for employment, less net interim earnings. All backpay due under the terms of this Order shall be computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the

manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Union to maintain and operate its referral system in a nondiscriminatory manner and to keep and retain adequate records of its referral operations for a limited period to disclose fully the bases on which referrals are made.

ORDER

A. The National Labor Relations Board orders that the Respondent, Laborers' Local Union No. 230, Laborers' International Union of North America, Hartford, Connecticut, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause discrimination against Gary R. Wall by requesting the Respondent Development Consultants, Inc., or any other employer, to terminate his employment, and by requesting and causing the Respondent Development Consultants, Inc., or any other employer, not to recall him from layoff, or by refusing to refer him for work under its job-referral procedure, or by otherwise causing discrimination against him in retaliation for his activities protected by Section 7 of the Act.

(b) Causing or attempting to cause discrimination against William Cooksey Sr., William Cooksey Jr., and Joseph DiLoreto by refusing to refer them for work under its job-referral procedure, or by otherwise causing discrimination against them in retaliation for their activities protected by Section 7 of the Act.

(c) Maintaining a hiring hall whereby referrals are made in a discriminatory manner.

(d) In any like or related manner restraining or coercing its members or applicants for referrals in the exercise of rights guaranteed them by Section 7 of the Act.

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

(a) Maintain and operate its job referral system in a nondiscriminatory manner.

(b) Notify Development Consultants, Inc. in writing, with copies to Gary R. Wall, that it has no objection to the hiring or employment of Wall and request Development Consultants, Inc. to hire Wall for the employment he would have had were it not for the Respondent's unlawful conduct or for substantially equivalent employment.

(c) Make whole Gary R. Wall, William Cooksey Sr., William Cooksey Jr., and Joseph DiLoreto for any loss of earnings they may have suffered as a result of the discrimination against them in the manner set forth in the amended remedy section of this Decision and Order.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all

hiring hall records, dispatch lists, referral cards, and other documents necessary to analyze the amount of backpay due under the terms of this Order.

(e) Keep and retain for 2 years from the date of the attached notice adequate records of its referral operations that will disclose fully the bases on which referrals are made and make those records available to the Regional Director for Region 34 on request.

(f) Post at all places where notices to members or applicants for referral are posted copies of the attached notice marked "Appendix A."³ Copies of the notice, on forms provided by the Regional Director for Region 34, 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 or applicants for referral 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.

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

B. The National Labor Relations Board orders that the Respondent, Development Consultants, Inc., Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recall Gary R. Wall from layoff or to hire him for employment at its Northeast Plaza jobsite or by otherwise discriminating against him pursuant to the request of Respondent Laborers' Local Union No. 230, Laborers' International Union of North America.

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

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

(a) Offer Gary R. Wall immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other

records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Hartford, Connecticut office and all its jobsites within the territorial jurisdiction of Laborers' Local Union No. 230 copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, 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 employees 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.

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

⁴ See fn. 3, above.

APPENDIX A

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 maintain our hiring hall, pursuant to policies or practices whereby referrals are made in a discriminatory manner.

WE WILL NOT cause or attempt to cause employers to discriminate against Gary Wall in retaliation for his activities protected by Section 7 of the National Labor Relations Act.

WE WILL NOT refuse to refer for employment or otherwise discriminate against Gary R. Wall, William Cooksey Sr., William Cooksey Jr., and Joseph DiLoreto in retaliation for their activities protected by Section 7 of the National Labor Relations Act.

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

WE WILL notify Development Consultants, Inc. that we have no objection to its hiring of Gary R. Wall and WE WILL request it to hire Wall for the jobs he would have had were it not for our unlawful conduct or for substantially equivalent employment.

WE WILL make whole Gary R. Wall, William Cooksey Sr., William Cooksey Jr., and Joseph DiLoreto for any loss of earnings and other benefits they may have suffered by reason of discrimination we caused against them, with interest.

³ 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."

WE WILL revise our policies and practices to ensure that our job referral system functions on a nondiscriminatory basis.

WE WILL keep and retain for 2 years adequate records of our referral operations that will disclose fully the bases on which referrals are made and make these records available to the Regional Director for Region 34 on request.

LABORERS' LOCAL UNION NO. 230, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

APPENDIX B

NOTICE TO EMPLOYEES
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 refuse to recall from layoff or rehire our employees at the request of Laborers' Local Union No. 230, Laborers' International Union of North America or any other labor organization for reasons proscribed by the National Labor Relations Act.

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

WE WILL offer Gary R. Wall immediate and full reinstatement to his former job or, if that at job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and

WE WILL make him whole for any loss of earnings and other benefits he may have suffered by reasons of discrimination against him, with interest.

DEVELOPMENT CONSULTANTS, INC.

Mark W. Engstrom and Michael Marcionese, Esqs., for the General Counsel.

David Kamins, Esq., of Hartford, Connecticut, for Respondent Development Consultants, Inc.

Robert A. Cheverie, Esq., of Hartford, Connecticut, and *Michael S. Barse, Esq.*, of Boston, Massachusetts, on behalf of Laborers' Local Union 230, Laborers' International Union of North America.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Based on charges filed by Gary R. Wall in Case 39-CB-827, William Cooksey Jr. in Case 39-CB-833, Joseph A. DiLoreto in Case 39-CB-840, William Cooksey Sr. in Case 39-CB-

858, and John Fisk, in Case 39-CB-860, the officer in charge for Subregion 39 issued a complaint alleging that Respondent Laborers' Local Union No. 230, Laborers' International Union of North America (the Union) has been engaging in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act. Based on the charge by Gary R. Wall in Case 39-CA-3046, a complaint issued against Development Consultants, Inc. (DCI) alleging that it violated Section 8(a)(1) and (3) of the Act. All of these complaints were consolidated for hearing. Hearing was held in Hartford, Connecticut, on February 24, 25, 26, and 27 and March 2 and 3, 1987. Briefs were received from all parties.

On the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

(a) Respondent DCI is a Connecticut corporation with an office and place of business in Hartford, Connecticut, and a jobsite in Hartford, Connecticut (the Northeast Plaza jobsite). DCI is engaged as a general contractor in the building and construction industry, constructing commercial and office facilities. Respondent DCI has admitted the jurisdictional allegations of the consolidated complaint, and I find that it is now, and has been at all times material to these proceedings, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) The Ceco Corporation (Ceco), a Delaware corporation with an office and place of business in Hartford, Connecticut, and jobsites located in Hartford, Connecticut (the Xerox Central project and the Underwood Towers project) has been engaged in the business of providing general building construction or form work and related services to commercial businesses. Respondent Ceco has admitted the jurisdictional allegations of the consolidated complaint, and I find that Ceco is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(c) The Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (the AGC) is an organization composed of employers engaged in the construction industry and exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including Respondent Union. The AGC has admitted the jurisdictional allegations of the consolidated complaint and I find that the AGC and each of its members are now, and have been at all times material, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(d) The Connecticut Construction Industry Association, Inc. (CCIA) is an organization composed of employers engaged in the construction industry and exist for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including Respondent Union. The CCIA has admitted the jurisdictional allegations of the complaint, and I find that the CCIA and each of its members are now, and have been at all times material, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Laborers' Local Union No. 230, Laborers' International Union North of America is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Summary of Allegations and Issues Presented

The Charging Parties in this case have been for some years members of the Union, which is located in Hartford, Connecticut. Local 230, through its statewide parent body the Connecticut Laborers' District Council, is party to two collective-bargaining agreements covering the entire State of Connecticut. The agreement with the Labor Relations Division of the AGC pertains essentially to building and site construction whereas the contract with the CCIA covers primarily heavy and highway construction. The Respondent DCI is a member of the AGC and is a party to the AGC agreement. In addition, a large number of other construction employers sign independent or so-called me-too acceptances which bind them to the full terms of the AGC or CCIA contract according to the type of work performed.

Insofar as the individual alleged discriminatees are concerned, the General Counsel has alleged an unlawful scheme or conspiracy between DCI, through its executive vice president, Joseph Anderson, and Local 230, through its business manager and secretary/treasurer, Domienick Lopreato, to not recall Gary Wall after a concededly lawful layoff from employment which occurred on or about February 6, 1986, at DCI's Northeast Plaza site in Hartford. The unlawful motive alleged by the General Counsel was to retaliate against Wall for his dissident and internal union activities, for running for office against Lopreato in the union election held in June 1986, and for his criticisms of Lopreato's administration.

In addition, the General Counsel has charged that the Respondent Local 230 thereafter refused to refer Wall and the other individual Charging Parties to jobs through its hiring hall on a nondiscriminatory basis because of their dissident activities in running for union office on Wall's slate or supporting Wall's opposition candidacy.

Finally, the General Counsel has charged that regardless of the individual acts of alleged discrimination asserted in the amended consolidated complaint, the Charging Parties were victims of the Union's hiring hall practices alleged to be unlawful because the referral system functioned as an exclusive source of laborers within the territorial jurisdiction of Local 230 and lacked objective standards and criteria for referral.

It is the position of Respondent Local 230 that the General Counsel failed to make a prima facie case of discrimination against Wall and the other Charging Parties in violation of Section 8(a)(1) and (3) of the Act or of Section 8(b)(1)(A) or (2) of the Act as alleged. Respondent Union further asserts that even assuming that the General Counsel has introduced probative evidence to present a triable issue on these claims, the Respondent produced more than ample evidence to demonstrate that Wall, regardless of his protected activities, would not have been recalled from layoff by the DCI due to his known reputation as a nonworker. Respondent DCI joins in this defense.

Insofar as the other Charging Parties aside from Wall are concerned, the Union asserts that there is no substantial credible evidence to demonstrate a plot or scheme by Lopreato to deprive them of work opportunities through the hiring hall.

Finally, the Union urges that the General Counsel's case concerning the alleged exclusivity and unlawfulness of the hiring hall operation failed.

At the conclusion of the General Counsel's case, the charge in Case 39-CB-860 involving John Fisk, an individual, was withdrawn.

Based on the amended consolidated complaint, answers of Respondents, and evidence presented at the hearing, the following issues are presented for determination:

1. Whether Respondent DCI violated Section 8(a)(1) and (3) of the Act by failing and refusing to rehire Gary Wall for employment at its Northeast Plaza jobsite.

2. Whether the Respondent Union violated Section 8(b)(2) of the Act by attempting to cause the termination of Wall by Respondent DCI from its Northeast Plaza jobsite and by causing Respondent DCI to refuse to rehire Wall for employment at the Northeast Plaza jobsite.

3. Whether the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by operating an exclusive hiring hall without objective criteria or standards for referral and by failing and refusing to refer Wall, William Cooksey Jr., Joseph A. DiLoreto, and William Cooksey Sr. to employment with employer-members of the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. and employer-members of the Connecticut Construction Industry Association, Inc.

B. Statement of the Facts

The Respondent Union is 1 of approximately 15 locals in the State of Connecticut which are affiliated with the Connecticut Laborers' District Council and the Laborers' International Union of North America. The Respondent Union's territorial jurisdiction extends through the north central and the northeastern portions of Connecticut, and at the time of hearing the Respondent Union had approximately 1250 active members. Membership levels have increased in recent years as a result of a construction boom occurring within the Respondent Union's territorial jurisdiction which has led to the creation of many new jobs.

For the past 17 years, the Respondent Union has been led by Business Manager and Secretary/Treasurer Lopreato. Lopreato is the principal officer of the Local and reports "only to the membership."

Lopreato was most recently elected to office in June 1986, in what was the first contested election to be held by the Respondent Union during Lopreato's tenure of office. As has been his practice, Lopreato ran on a slate with a number of other candidates for various Local positions, including Vice President and Field Representative John Pezzenti, and President and Field Representative Charles LaConche. Although Lopreato testified that it did not matter to him who ran on his slate, he acknowledged there were times when he did make recommendations with respect to the composition of the Respondent Union's executive board and that none of his recommendations had ever been rejected.

The 1986 challenge to Lopreato's slate was mounted by a group known as "The Committee to Reform Local 230."

This slate was led by Gary Wall, who was running against Lopreato for the position of business manager and secretary/treasurer, and William Cooksey Sr., who ran against Pezzenti for the position of vice president. Joseph DiLoreto, another one of the Charging Parties herein, was also affiliated with Wall's slate as a candidate for auditor. Other candidates affiliated with the "reform" slate were Frank Cecchini, Angelo Zangari Jr., and Quintino Cianfaglione. The 1986 election was held in June and the "reform" slate lost to Lopreato's incumbent slate by a considerable margin.

In addition to his duties as an officer of the Respondent Union, Lopreato also serves as business manager and secretary/treasurer of the Connecticut Laborers' District Council. According to Lopreato, a loss to Wall in the Local elections would not have affected his status as an officer of that organization, although holding Local office was a prerequisite to the initial assumption of District Council duties.

The Respondent Union is party to two collective-bargaining agreements with employer associations which apply to many of the Locals affiliated with the Connecticut Laborers' District Council. One agreement is with the AGC, and the second agreement is with the CClA. The AGC agreement applies to building contractors and the agreement in effect at the time of the hearing was effective by its terms from June 1, 1984, through June 30, 1987. The CClA, by contrast, applies to utility and heavy highway contractors and the agreement in effect at the time of the hearing had a term extending from April 1, 1984, through May 1, 1987. Lopreato was involved in the negotiation of both these agreements.

Respondent DCI, one of the employer-members of the AGC, functions as a construction manager with respect to the construction of commercial and office facilities. In 1983 Respondent DCI became involved with the Northeast Plaza project in Hartford, Connecticut. The Northeast Plaza is a project consisting of over one million square feet, spread over two 14 to 16 story towers and an underground parking garage designed to accommodate approximately 450 cars. During the course of the project Respondent DCI has employed many of the Respondent Union's members under the terms of the 1984 AGC agreement.

Wall was among the laborers who worked for Respondent DCI at the Northeast Plaza project. Wall reported to the jobsite in December 1983, after being appointed as the Respondent Union's site steward by Lopreato. According to Wall, his appointment to the steward's position resulted from a settlement between himself and the Respondent Union with respect to an NLRB charge which Wall had filed against the Respondent Union in 1983. Wall claimed that his appointment as steward resulted from his agreement to withdraw the NLRB charge. Wall's charge in Case 39-CB-368 was filed in February 1983 and resulted in a complaint against the Respondent Union alleging, *inter alia*, that the Respondent Union unlawfully caused Wall's termination from employment with an employer and subsequently refused to refer Wall through its hiring hall.

The officer in charge of Subregion 39 approved Wall's withdrawal of that charge on May 17, 1983, after Lopreato had taken the unusual step of signing Wall's withdrawal request form as a witness on the date that Wall executed the form. Although Lopreato denied that Wall's appointment as steward had anything to do with the settlement of any unfair labor practice charges against the Union, he had no expla-

nation for why he signed Wall's withdrawal request form as a witness. Moreover, without having admitted to having committed an unfair labor practice, Lopreato admitted that he was, in fact, responsible for Wall's layoff from the SESCO Construction Company as alleged in the complaint. Lopreato attributed his acts in this regard to Wall's alleged assault of Union Local Official Leonard Granell. Wall denied having assaulted Granell, although he admitted having a fight with him. Having made these allegations against Wall, Lopreato testified that Wall was appointed steward at the Northeast Plaza as a result of a request from International Secretary/Treasurer Arthur Coia.

Insofar as the credibility determination necessary with respect to why Wall was appointed steward at the Northeast Plaza jobsite, I credit Wall's version of the story. It is inconceivable to me that Lopreato would on the one hand have Wall removed from a job for allegedly assaulting Granell, and then willingly appoint him steward on a major construction project. At this juncture it is also probably well to note that I find that Lopreato and Wall's intense animosity toward one another predates substantially Wall's appointment on the Northeast Plaza jobsite and definitely predates Wall's abortive attempt to run for Lopreato's office.

Wall's relationship with Lopreato deteriorated to new lows in the fall of 1985, when a series of events on the Northeast Plaza jobsite culminated in Lopreato's removal of Wall as steward in November 1985. Wall claims that about 1 week prior to his removal as steward, he had a dispute on the jobsite with Pezzenti concerning money the Respondent Union wanted Wall to collect for the Governor's reelection campaign. According to Wall, Pezzenti said that Lopreato wanted Wall to collect \$3 per week from each laborer on the jobsite for a period of 8 weeks. The collection was not to be limited to Respondent DCI's employees, but was to extend to laborers working for every subcontractor on the jobsite. Wall testified that he declined to make the collections, and Pezzenti left. Wall testified that the following day Pezzenti returned to the jobsite and told Wall that Lopreato was mad and Lopreato wanted Wall to collect the money. Wall quoted Pezzenti as saying, "you got to collect this money . . . you're going to get yourself in trouble with Lopreato for not collecting this money." According to Wall, Pezzenti also said that Lopreato wanted Wall to make a Christmas collection for the Union of \$20 per laborer. Wall claims to have told Pezzenti, "tell Lopreato I don't shake down laborers. I'm not collecting no money from nobody." According to Wall, Pezzenti then repeated that Wall was going to get himself in trouble with Lopreato and left the jobsite.

Although Pezzenti acknowledged that the Respondent Union attempted to collect money for the Governor on a couple of jobsites, he denied ever requesting Wall to solicit such contributions or that he ever told Wall he would be in trouble with Lopreato for refusing to solicit such contributions. Lopreato acknowledged that he instructed Pezzenti to solicit money on behalf of the Governor on jobsites. According to Lopreato, the Respondent Union had purchased a number of benefit tickets at a cost of \$15 per ticket. Rather than ask individual laborers to buy a \$15 ticket, Lopreato directed Pezzenti to solicit the contributions over a 2- or 3-week period of \$1 per week which would then go into a pool to help pay for the Respondent Local's tickets.

Although Wall's testimony with respect to the collection he was to make from the men on the jobsite was exaggerated, it appears to me from all the testimony that he was requested to make such collections. In this regard, Thadius Grabonski Jr., Wall's successor as steward on the Northeast Plaza jobsite, stated that every year it was customary for the steward to solicit a Christmas collection for the union hall from the employees on the jobsite. Grabonski said he did not solicit a Christmas collection in 1986 because of all of the trouble the 1985 collection caused. Grabonski stated the 1985 collection caused quite a commotion on the jobsite and he confirmed that Wall was at the heart of that commotion. Moreover, Grabonski observed it was common knowledge on the jobsite that Wall had a dispute with the union leadership in the fall of 1985. Grabonski was one of the most credible witnesses in this proceeding, and I credit his testimony whenever it conflicts with that of another witness.

In this regard, Wall testified that following his dispute with Pezzenti over the jobsite collection he began to publicly advocate the removal from office of Lopreato, Pezzenti, and other incumbent officials and that it became evident on the jobsite that Wall would challenge Lopreato for control of the Union, even though Wall did not officially declare his candidacy until the spring of 1986.

It was after the dispute concerning the Union's collection practices that Lopreato relieved Wall of his position as steward. Lopreato officially notified DCI of Wall's removal by letter dated November 11, 1985. Lopreato's asserted reasons for relieving Wall from his duties as steward was Wall's referral of two laid-off laborers for employment with Respondent DCI. Lopreato explained that stewards do not have the right to bypass the Union's hiring hall system and directly refer employees to employment opportunities on their own initiative.

Wall admitted referring two laborers to employment with Respondent DCI as complained of by Lopreato. Wall contended that there was nothing unusual in this practice, inasmuch as the laborers in question had recently been laid off from another contractor on the Northeast Plaza jobsite and he was simply keeping laborers on the jobsite by moving them from one contractor to another. According to Wall, he routinely advised either Lopreato or Pezzenti of such referrals and there was never a problem with them until November 1985. Consistent with this past practice, Wall claimed to have advised Pezzenti of the referrals which led to his removal as steward, and said that Pezzenti raised no objection. Pezzenti, however, denies that Wall ever advised him of these referrals.

Lopreato also testified that Wall provided no advance notice of his intent to refer laborers for employment at Respondent DCI's Northeast Plaza jobsite, and claimed not to have been aware of Wall's referrals until he arrived at the jobsite one morning in early November to investigate a report that Respondent DCI had hired two new laborers without consulting with the Union. According to Wall, Lopreato and Pezzenti arrived at the jobsite on the morning the employees he referred reported for work with Respondent DCI. Wall claims that Lopreato stepped out of his car and began directing profane language at Wall, accusing Wall of wanting Lopreato's job and ultimately firing Wall. Wall said that Lopreato then announced that he was going to fire the two laborers that Wall had referred to the jobsite and again said

that Wall was fired as steward. Lopreato and Pezzenti then got back in the car and drove around to the other side of the jobsite.

Lopreato and Pezzenti denied that Lopreato directed any profanity toward Wall and claimed that Lopreato remained calm throughout the exchange. They also testified that Wall made physically intimidating gestures toward them. Third party witnesses called by the General Counsel confirmed that there was a heated exchange between Wall and Lopreato in which Lopreato was anything but calm and passive. James DiPietro, a laborer working on the Northeast Plaza jobsite, observed the exchange from a fifth floor vantage point. Although DiPietro was unable to hear exactly what was said, he was able to see Wall, Lopreato, and Pezzenti waving their hands in the air at each other and to hear quite a bit of a shouting and yelling emanating from the scene. Laborer Joseph D'Amico was in the immediate vicinity of the argument and testified that he heard Lopreato yelling at Wall and that at one point Lopreato told Wall, "you want my job, you can have it, you're fired." Robert Granell, a labor foreman who was called as a witness by Respondent DCI, confirmed that there was an argument between Wall and Lopreato on the jobsite at the time Wall was removed as steward.

Following the initial exchange between Lopreato and Wall on the jobsite, Lopreato and Pezzenti drove to Respondent DCI's office trailer at the other side of the site. Wall walked across the construction site and arrived at the office trailer sometime after Lopreato and Pezzenti had arrived. Wall testified that when he arrived at the trailer he received a message to call Arthur Coia, the secretary/treasurer of the Laborers' International Union of North America. Despite his position with the International, Coia has significant local ties and was a one-time friend of Wall who was even called on to participate in the baptism of Wall's daughter. Wall testified he returned Coia's phone call and that Coia asked him, "who made you the boss?" and began swearing at Wall over the telephone. Finally, according to Wall, Coia told him that he was fired and that he would never work again. According to Wall, Coia told him, "you'll never work again the rest of your life." The conversation then ended and Wall left the trailer, where he saw Lopreato running around and screaming at the labor foreman and others present that the two individuals Wall had referred for employment had to be fired right away. Lopreato then directed his wrath at Wall, and told him, "you'll never work again. . . . That's it. You're finished in this local. You'll never work again."

According to Lopreato, he left the jobsite following his initial meeting with Wall in the morning and returned again in the afternoon to make sure that the two laborers whom Wall had referred to Respondent DCI had been removed from the job. Lopreato claims that he was greeted with a threat from Wall when he arrived, when Wall said, "I'm going to get you." Lopreato said he left the jobsite without response and dictated a letter to Respondent DCI. Wall denied threatening Lopreato in this or any other manner.

Pezzenti offered another account of what happened following the initial exchange between Wall and Lopreato. According to Pezzenti, following the initial exchange, Lopreato and he returned to the Respondent Union's office. Approximately 90 minutes later, they returned to the jobsite and Pezzenti approached Wall while Lopreato remained in the car. Pezzenti told Wall that the two laborers who Wall

had referred for employment were leaving the jobsite, and then returned to the car and drove back to the office with Lopreato.

The cause of Wall's termination as steward on the jobsite is a good place to point out the difficulty in this proceeding with making credibility determinations. None of the principals in this proceeding offered testimony that in its entirety appears to me to be wholly credible. Therefore, to the extent possible when making important credibility determinations, I have attempted to look at all objective evidence surrounding the incident rather than relying solely on the testimony of the people involved in the incident. In this particular case, I believe that Wall's refusal to make collections was the reason behind his removal as steward. Lopreato could not fire Wall for this reason without violating the law. Yet, as Grabonski testified, the refusal to make collections caused quite a commotion on the jobsite and put Wall at odds with the union leadership. For reasons that will be discussed shortly, I find that Lopreato seized on the matter of Wall's hiring of the two workers as a legitimate reason for firing Wall and removing his challenge to his direction, i.e., making collections.

The Union's asserted reason for removal of Wall as a steward does not strike me as being logical. Lopreato and other Respondent Union witnesses assert that Lopreato fired Wall as steward because he referred two men to employment on the Northeast Plaza jobsite without sending them through the hiring hall process or at least contacting the hiring hall about their employment. There is evidence that Wall had previously engaged in this practice with employees such as DiPietro and others and Wall also testified that he notified the Union of the referrals which led to his removal as steward. Additionally, I cannot find how the Union's action with respect to Wall and the two employees in question squares with the position of the Union that it runs a nonexclusive hiring hall in which employers frequently hire laborers directly off the street with the Union's blessings. Respondent Union offered evidence through several witnesses that it was routine practice for employers to hire certain persons, some of whom were not even members of the local union at the time of hiring. It appears to me that Lopreato just simply ceased upon the transfers of the two workers as an excuse to remove Wall as a steward and that the real reason for his removal was the general animosity between the two men, apparently retriggered by Wall's refusal to aid in collection of money from the men on the jobsite.

Lopreato wrote a letter advising Respondent DCI that Wall had been relieved of his steward duties. He specifically stated that Wall could remain as a laborer. However, the evidence reveals that Wall continued to publicly denounce Lopreato for certain practices such as collection of moneys from the workers which culminated in an open argument between Lopreato and Wall at a January 1986 union meeting.

Following his layoff and in accordance with Lopreato's letter, Labor Foreman Robert Granell, who owed his job to Lopreato, hired Wall to maintain heaters on the DCI jobsite. Wall candidly admitted that this was one of the better job assignments a laborer could receive, and by all accounts he performed his job adequately and no complaints were directed toward his job performance.

On February 7, 1986, Respondent DCI laid off the laborers' crew assigned to tower 2 at the Northeast Plaza jobsite,

including Wall. Altogether, nine laborers on Wall's crew were laid off, and all but Wall were recalled within 2 weeks of the layoff date. Wall has not been recalled to date.

The General Counsel contends that the DCI's failure to recall Wall was the result of pressure being exerted against DCI by the Union and especially Lopreato. The Union denied that any pressure was exerted in this regard and Respondent DCI asserts that Wall was not recalled because he was not a good laborer.

In support of his position, the General Counsel offered the testimony of James DiPietro, a former police officer, who subsequently became affiliated with Respondent Union as a result of connections between his family and Lopreato. DiPietro testified that he had a conversation with Labor Foreman Donald "Skip" DiMeo of Respondent DCI on the jobsite soon after Wall had been removed as steward. According to DiPietro, DiMeo told him that he and the other labor foreman on the job, Robert Granell, both of whom are admitted supervisors within the meaning of the Act, were receiving quite a bit of pressure from Dick Olsen, Respondent DCI's general superintendent on the Northeast Plaza project, to "get rid of Gary Wall." DiMeo also told DiPietro that this pressure was coming from Lopreato. This conversation was followed by a second conversation between DiMeo and DiPietro on the jobsite during which DiMeo advised DiPietro that DiPietro should not get involved in the matter between Wall and Lopreato if he wanted to stay on the job. Finally, in early February 1986, DiPietro had another conversation with DiMeo on the jobsite during which DiMeo told DiPietro that Joe Anderson, Respondent DCI's project manager for the Northeast Plaza project, had just returned from lunch with Lopreato where an agreement had been reached that all personnel working on the tower Wall was assigned to would be laid off and that everyone with the exception of Wall would ultimately be recalled from this layoff.

DiMeo, although admitting that DiPietro was one of the best laborers Respondent had on the jobsite, denied making the statements attributed to him by DiPietro, with the exception of the admonition to DiPietro to stay out of the dispute between Wall and Lopreato.

Another witness, James S. D'Amico, testified about a series of conversations he had with Foreman Granell following Wall's removal as steward. The first conversation occurred on the jobsite in November 1985, several days after Wall had been relieved from his steward duties. D'Amico testified that Granell told him there was a lot of heat on the job because Lopreato was calling Joe Anderson every day in an effort to get Wall removed from the jobsite, and that Teddy Grabonski, Wall's successor as steward on the job, was taking down the names of anyone seen talking to Wall. Following Wall's layoff in February 1986, D'Amico again spoke to Granell on the jobsite and Granell said that Wall had attempted to get his job back but there was no way that this would happen because the decision was subject to Lopreato's approval. According to D'Amico, Granell warned him, "you can't fight these people."

Granell either denied or could not recall making the statements attributed to him by D'Amico. Granell denied ever telling Wall that Lopreato was putting pressure on the job or on Joe Anderson. When asked whether he recalled telling D'Amico that he was getting heat on the job about Wall,

Granell answered, "I don't remember." When asked whether or not he told D'Amico that Lopreato was calling Joe Anderson every day to get Wall off the job, he answered, "I don't remember ever telling Joe that." When asked whether he told D'Amico or Wall that "you can't fight these people" that "he couldn't give Wall his job back" and that "he had to go through Lopreato to get his job back," Granell answered, "I don't recall saying that, but if I did, the steward is picked by the business agent which is Dominick, I couldn't give Gary his job back if I wanted to." In response to a question about Grabonski taking down the names of people speaking to Gary Wall, Granell answered, "I don't know anything about that." Grabonski was not asked about this. Granell got his job as working foreman by being recommended by Olsen and Anderson and then approved by Lopreato. This was pursuant to the contract between the parties. Granell also testified that he has authority on the job to lay off employees as a form of discipline. He also testified that it was his personal decision not to recall Wall following his layoff in February and believed, without discussing it with his superiors, that had he attempted to recall Wall, he would have been overruled.

Wall also testified about matters concerning his layoff. Additionally, he offered into evidence a large number of tape recordings that he secretly made of his conversations with a variety of people. One of these tape recordings involved a barroom conversation Wall had with Superintendent Lawrence Fields and Superintendent Olsen. Set out below is this conversation with the letter W referring to Wall, O referring to Olsen, and F referring to Fields.

W. Only one. . . . Yeah, I just wanted to know that I respected you guys, and there's no hard feelings here; you know what I'm saying, believe me.

O. I hope so, I hope so.

W. Ya Know, I have my friends in the Union too, and Larry, it was a pleasure working with you, right. I know that Arthur Coia put pressure on, uh, everybody to knock me off the job, you know it's a shame that they have to use. . . .

O. I thought Coia was your friend?

W. No, he's supposed to be, but see now what he's doing is taking Dominick's side, you know what I mean. But see, the Department of Labor is going to run this election, even the International's not going to stop it, you know what I'm saying. but he's deny it. Friends in the International told me Arthur Coia was going to have me knocked off the job, you know what I mean. I know what it is, I told the man what it is, I told the man, ya know, don't take it out on DCI, none of this, ya know, they're not the ones that are responsible for this, remember who, it's too bad that the Union had to get you guys involved, you know what I'm saying. Like I told you in the beginning, when they knocked me off the steward's job, that I wouldn't do anything to get DCI involved in this, you know what I'm saying. But they did, they kept pressuring and pressuring and pressuring, they're doing it on other jobs too, you know. They wanted other jobs. The stewards, they told them this is who I lay off. Manifold told the steward down there, he told him he said if they knock you off as a steward I'm going to keep you on as laborer, he

said and Dominick doesn't pick my layoffs either. He told him, he told him. He called Dominick on the phone and he told Dominick, he said, uh, he said he doesn't even want to talk to him.

O. Uh, I understand that Dominick tried to do that here too, and I told Joe Anderson (inaudible) what has to happen, it has to happen.

W. Yeah.

O. We're just so fucking far behind on this.

W. Yeah.

O. I bet that Harry weighed his trip out there, uh huh.

W. Yeah.

F. You can't do anything.

W. But I know they got whats-his-name too, uh, Kevin and Joe, ya know.

Disputed voice: Yeah.

O. Well, I'm glad you understand what's happening Gary.

W. Oh, I understand it. Yeah. I never want, you know. . . . I think I had a good working relationship with you guys when I was the steward. I want to keep it that way. When I win the election I'll come back, we'll have another good relationship.

Voice in dispute: I hope so.

W. I'm going to win too dick, and we'd be big all over the place. . . . You know where [sic] bad thing they made a mistake too, when they went and charged all the laborers for Christmas. You know, when the steward went to all the laborers and said you have \$10 a man, right. All the laborers had to give \$10 a man for Christmas. Did you know that?

O. No, I didn't.

W. Oh yeah. On this job every laborer had to give \$10 a man for Dominick. On other jobs it was \$25 a man. If you didn't give it you went down on a list. Every job that I was a steward on, I never did that in my life. When Johnny Pezzenti used to come down and say to me you have to make the Christmas collection from the men, I'd say John I'm not going it. I'm not going to ask a man for . . . and at the meeting I stood up and said it. At the meeting I stood up and said it. I said not one man in this room can stand up and say that I took 5 cents from them on the job. Nobody stood up. I [inaudible]. Now, you two guys look at 'em [sic], you tell them that you never took 5 cents, and they couldn't say nothing and the place got like a funeral parlor.

O. Yeah?

W. Oh yeah.

O. How long has it been going on, Gary?

W. It's been going on for as long as I can remember, since I was a kid.

F. There are alot of things going on that are over me.

W. I know that.

F. But have you had any problems with me.

W. Never.

F. One time.

W. Yeah, that was just a misunderstanding.

F. Yeah.

W. Yeah. You know I had all the respect for you as a superintendent. I worked with you 20 years ago, I thought, you know [sic] . . .

F. I think we have some excellent men.

W. Definitely.

W. Yeah. But you know what the shame is, that they have to hurt these men just [to] get at me, that's the shame. You know what I mean Larry.

F. I know that. I, I, I tried to do . . . when they brought to my attention I would like to have done something else but I couldn't do it. Gary, you've been through [inaudible].

W. You see that's the other thing, too, Bobby knows Dominick tried to threaten to knock him off as a foreman. So see what they're trying to do now, they're trying to punish Bobby. But what they're going to do is put him back as a foreman next week, you know what I mean. I told all the laborers down there, I said, I said to them let[']s not be naive here, listen, they're doing this to get me and you guys just stay put and DCI will call you back next week. You know what I mean. I know that Arthur Coia got the [inaudible].

F. I'll take every man I got back . . .

W. I know you would.

F. . . . including you.

W. Thank you for saying that. I appreciate it.

F. Including you. You've been doing what you should do. Believe me Gary, [the] union have [sic] get [sic] to change.

W. I know it.

W. You worked that because you were [a] steward or superintendent. You know what, uh, Dominick was calling what's his name there, uh, Joe Anderson on the phone every day Larry, every day to lay me off, Bobby was telling me. You know about that too? Every day.

F. Why?

W. It's because of the election.

F. Oh, so they're worried?

W. Oh yeah, they're definitely worried.

F. Why should you be worried, or they should be worried?

W. What you may be worried about. But it's a shame they involved Joe Anderson and Kevin Leach in something like this.

F. It's a shame to hurt people.

W. I know it. I know it, and all those workers who got to get laid off because of me, ya know. [I]t's a shame.

F. Bobby has 10 of the best men in the Goddammed local.

A day or two before the layoff Wall had a private conversation with Foreman Granell at tower 2. According to Wall, Granell said that Lopreato had finally gotten Wall. Wall credits Granell as saying that Respondent DCI would have to lay off everybody in the tower in order to get Wall. Wall also claimed that he had several conversations with Granell during which Granell said that Lopreato was giving Project Manager Joe Anderson "a lot of heat" about getting Wall off the job.

On the day of the layoff, Wall testified that he spoke privately with Foreman DiMeo outside of the DCI trailer at the

Northeast Plaza jobsite. According to Wall, DiMeo told him that it was too much for him to try to fight Lopreato. Although DiMeo did not deny making the quotes specifically attributed by Wall, he did generally deny that he ever told Wall he had been receiving pressure from Lopreato, the Respondent Union, Anderson, or Olsen to get rid of Wall and not bring him back on the job.

Lopreato denies asking or pressuring DCI to take any actions against Wall. With respect to the testimony offered by D'Amico, the Respondents point out that D'Amico presently works for Wall's wife in a real estate business. D'Amico admitted that he had spent a lengthy period of time in a prison for a felony murder conviction resulting from a robbery. Also, D'Amico was presented with his affidavit given to the Board wherein he said that the November incident (removal of Wall as steward) occurred because Lopreato was angry with Wall because Wall was running for Lopreato's office. Wall was not running for office in November. No reason was given to discredit the testimony of DiPietro whereas Granell was probably the most unbelievable witness in the entire record. I credit the evidence of union pressure being exerted against DCI over Wall, primarily on the basis of the statements attributed to Granell. I also credit the testimony of D'Amico, DiPietro, and Wall in this regard for the additional reason that Respondent DCI's reasons for not recalling Wall from layoff do not appear logical.

Wall made several attempts to get his job back following the layoff by appealing directly to Project Manager Anderson. Wall visited Anderson's office on the advice of Larry Field and General Superintendent Dick Olsen after everyone but Wall had been recalled to Wall's former work crew. Wall had previously solicited employment from Foreman Granell, who according to Wall told him, "you know I can't do anything. [Lopreato] will have my job if I hire you back." Wall visited Anderson in Anderson's office in Hartford, which was removed from the jobsite. Wall claimed to have told Anderson that he knew Lopreato was responsible for his layoff and that he had been advised by counsel to speak to Anderson and find out if Anderson wanted to get involved because the whole affair was going to become a legal matter. Wall said that Anderson replied that he did not want to get involved in a legal matter and that he would contact either Wall's attorney or his own attorney and get back to Wall. Nothing else was said at that time, and Wall subsequently returned to Anderson's office to follow up on the initial conversation. Wall asked Anderson if he could be hired back, and claimed that Anderson replied that he "was not hiring back." Anderson did not dispute Wall's account of these meetings, except to emphasize it was Wall's position that, if Respondent DCI did not assist him in his legal efforts against the Union, Respondent DCI and Anderson himself would also become targets of Wall's legal actions. Anderson also described a third encounter between himself and Wall in his office at which time Wall was accompanied by a sheriff who served Anderson with a summons to the Connecticut Superior Court.

Respondent DCI's superintendent testified that he called the February layoff because it occurred when DCI's work had caught up with the work done by the iron workers. The layoff was not designed to get at Wall, rather it was an economic decision made by Olsen and Anderson. Field was unaware of any pressure on DCI by the Union and does not

recall any conversation with Wall concerning these issues. This of course would not include the taped conversation in the barroom which, though Field does not deny, Field could not remember. However, as noted earlier, Field's conversation with Wall in the barroom does indicate that he did not have any knowledge of pressure being put on DCI by the Union at one point. Olsen denied that Wall's nonrecall was a result of some dispute with the Union. According to Olsen, he and Anderson determined that they should refuse to recall Wall so in the future perhaps they would get a steward who would work. Olsen believed that DCI had paid Wall for many months as steward when he did no work. "It burns me up to have a man being paid for not working." Olsen emphasized the policy of the Company only to recall the best men who worked for them as laborers and there was no reason to recall Wall because he was not one of DCI's best men. Anderson denied that Lopreato ever told him to get rid of Wall. The only instance that he could recall where Lopreato attempted to be influential in connection with DCI's laborer work force was around Christmas in 1985 when he received a call from Lopreato concerning a list of persons he hoped to save from a layoff, assuming one came about. Anderson transmitted this list to DiMeo who tore it up.

Anderson denied receiving any pressure from the Union and denies that any decisions made as to the work force were related to union influence. He contended that the February layoff occurred because the structural steel work slowed and DCI was able to save money by accomplishing the layoff. DCI did introduce evidence to demonstrate it did save money by having the layoff.

The General Counsel has determined that the February 1986 layoff was lawful, contrary to the argument of Wall. Anderson confirmed that he made the decision that Wall should not return to the job after the layoff. He noted, however, it was up to the foreman to determine whether he wished to recall a particular laborer. Anderson decried the practice of featherbedding, which is inherent in the concept of a nonworking steward. He got what he considered to be a threatening letter from Wall's attorney when he was requested to join with Wall in opposing the Union. After this letter was received, he had lunch with Lopreato to ask him what he was going to do about it. Thereafter he called counsel. In sum, Anderson noted that when Wall was paid as a steward, he believed that DCI was "paying for nothing." When asked how Wall's approach to his job as steward affected his view of him as a laborer, Anderson stated that "any featherbedding, whether it be by an operating engineer, or carpenter, or brick layer, I don't care. I'm not picking on any of you. It's the same in general. I cannot tolerate it. I will not tolerate it." Anderson denied he made any oral agreement with Wall to be a nonworking steward. He testified that Wall was supposed to but never did any work and was frequently off the jobsite in a phone booth when Anderson arrived for work. Anderson termed nonworking stewards as a "thorn in my side." It was Anderson's view that he would have gotten an even worse steward if he had taken action against Wall when he was the steward. Anderson considered it to be a Christmas present when Wall was removed as a steward. His reaction was, "maybe we'll get a steward that did something." He was also concerned about the amount of overtime that Wall earned while as a steward. On

cross-examination, Anderson denied that it is one of the unwritten agreements which exist that a laborer steward does not do any laboring work. It should be noted that DCI Working Foreman Granell testified that this was a common practice.

By the time of Wall's layoff, his dispute with Lopreato and other union officials had become the subject of debate at union meetings. According to Wall, an argument developed between himself and Lopreato at the January 1986 union meeting after Lopreato told all the laborers he had fired Wall because he had made \$7500 in 1 month. Wall replied by stating that he made his money legitimately, while Lopreato had to resort to shaking down the laborers.

Looking at all the evidence with respect to Wall's employment with DCI, his disputes with Lopreato, his removal as steward and subsequent failure to be recalled from layoff, and the reasons given therefor by the Respondent Company, I conclude that the General Counsel has proven by a preponderance of the evidence that Wall's layoff did result from pressure from the Union and/or Lopreato as its agent and not for the reasons advanced by Respondent DCI. Of all the laborers on Wall's crew to be laid off on February 7, 1986, Wall was singled out as an undesirable presence on the jobsite and was the only laborer on that crew not to be recalled by Respondent DCI, even though Respondent DCI continued to hire many laborers in the months to follow. Records disclose that 26 laborers who had no prior experience on the job were hired by Respondent DCI at the Northeast Plaza jobsite following Wall's layoff. Moreover, additional laborers were recalled to employment following Wall's layoff who had previously worked at the Northeast Plaza job. One laborer who was laid off on February 7 and was not recalled was not on the crew with Wall. This laborer had a history of tardiness and/or absenteeism on the job and was not considered desirable for that reason. The General Counsel points out that Wall had become an unruly and dissident presence on the jobsite who was posing a threat to Lopreato's control over the Union. In addition to refusing to collect money for political campaigns or for Christmas funds, Wall put himself in direct dispute with Lopreato. By the time of Wall's layoff, he had clearly identified himself as one in open opposition to Lopreato's management of the Union.

As I have earlier found, there is evidence that the Union increasingly put pressure on Respondent DCI to relieve Wall of his duties as a laborer on the Northeast Plaza jobsite. I believe and find that this pressure was the reason Wall was not recalled from the layoff of February 7. Respondent DCI's reasons for not recalling Wall simply do not appear logical to me. All of Respondent DCI's management objections to Wall related to his performance as a steward and none to his performance as a laborer attending the burners. Had DCI's management been as unhappy with Wall as they stated at the hearing, there was no reason to hire Wall as a laborer after he was removed from his job as a steward. In this regard, Project Manager Anderson stated that he was very upset with Wall's performance as a union steward, notwithstanding the fact that two of his supervisors, Olsen and Granell, testified that it was an accepted practice on all large jobs that the steward would not engage in manual labor. Anderson characterized Wall's role as steward as being nothing more than "featherbedding" and said that he had serious reservations about Wall being recalled because it was his hope that a

more competent steward might be hired. Anderson was unable to cite anything about Wall's performance unrelated to his duties as steward or his exercise of steward privileges as his reasons for not recalling Wall.

These sentiments were echoed by General Superintendent Olsen who complained that Wall was "always running away with one of the Union BA's or this or the other thing." Olsen acknowledged that he had no basis for believing that Wall was not on the job and not performing his duties during the time he was not a steward. Olsen also acknowledged that it was accepted practice that stewards did not engage in typical laborers' work and neither Anderson nor Olsen was significantly concerned about Wall's performance of his steward duties prior to the initiation of Lopreato's pressure to bother to discipline Wall or to attempt to resolve the problem they perceived constructively with union officials.

The testimony is that the ultimate decision not to recall Wall appears to have been made by Foreman Robert Granell. Granell's stated reason for this decision was unusual. Granell stated that he had no problems with Wall's work, either during or after Wall's tenure as steward. Granell also stated that none of his supervisors ever told him to get rid of Wall and denied that he was ever subjected to any pressure to remove Wall from the jobsite. Granell said that he had never discussed Wall with any of the supervisors and that his supervisors never inquired about Wall's performance. However, despite the fact there were no problems with Wall's work and that he never discussed Wall with any of his superiors, Granell stated that it was his belief that he would have been overruled had he decided to recall Wall from layoff with the other members of his crew. When asked to explain this, Granell simply said it was a personal opinion and that he had no reason for feeling the way he did. I would again note at this point that Granell's position was secured by Lopreato.

Although Lawrence Field initially testified that Wall was not one of his better laborers, he subsequently admitted that he had never seen Wall work and had no basis for saying that Wall was not a good laborer. On the tape recorded conversation set forth earlier Field appears to have admitted in the conversation that he would recall Wall. Laborer Foreman DiMeo testified that Wall had done some work while he was as steward. DiMeo also acknowledged that to the extent Wall may have been absent from the jobsite, it was not unusual for stewards to be absent from the jobsite in order to attend to union business. DiMeo also stated that he had never had any problems with any of Wall's work.

Another of Anderson's complaints about Wall was that he worked too much overtime, even though he acknowledged that the collective-bargaining agreement awarded stewards first preference to work overtime. Although Anderson said that he had problems with the number of hours Wall was working and at one point directed his subordinates to look into the matter, there was no evidence that any discrepancies or abuse of overtime privileges were uncovered by Respondent. Anderson also complained that Respondent DCI was billed for overtime which Wall performed for the contractors. Wall's successor as steward, Thadius Grabonski Jr., acknowledged that he also performed overtime work for contractors other than Respondent DCI, even though he was on the DCI payroll. According to Grabonski, DCI would simply backcharge the contractor for which the overtime had been performed for the value of the overtime services. Anderson

admittedly agreed to give Wall jurisdiction over the jobsite gates, a position that necessitated a great deal of overtime and lent itself to backcharging. Additionally, although Anderson complained that a lot of times he would come to work and see Wall in the telephone booth off the job, Anderson was unable to furnish any dates in connection with these observations and apparently never investigated them or had Wall disciplined for being off the job. In conclusion, the Respondent DCI failed to advance any reasons which are either logical or not contradicted by the evidence for its failure to recall Wall following the February 7 layoff. I find that the explanation for the Company's inaction in this regard is found in the evidence that Lopreato and Respondent Union did not want Wall on the jobsite and pressured DCI to have him removed.

In addition to the evidence of union pressure which I have heretofore found as fact, I find the timing of events to be compelling. First, Wall is removed as union steward in November. DCI management is apparently very pleased according to the testimony of Anderson and Olsen. A "Christmas present" was one description of Wall's removal. Yet, even given the ill will and stated dissatisfaction with Wall's performance as steward, DCI gives him a choice job as a laborer. Of course, Lopreato's letter had advised DCI that Wall could remain on the jobsite as a worker.

Second, Wall's criticism of Lopreato grows and culminates in open opposition at a late January union meeting. Within 2 weeks, Wall is laid off and never recalled, although the rest of his crew was recalled and no criticism of his performance as a member of the crew is to be found in the record.

Although DCI management insists it does not bend to pressure from the Union, Anderson admittedly passed to his foreman a list of workers' names to be retained in case of layoff prepared by Lopreato. Though the foreman chose not to act on the request, Anderson's willingness to pass the list on demonstrates DCI's willingness to accommodate Lopreato. Therefore, I find that Respondent DCI violated the Act by giving into the pressure of the Union, and the Respondent Union violated the Act by applying the pressure on Respondent DCI to not recall Wall from layoff.

C. Did Respondent Union Unlawfully Discriminate by Failing and Refusing to Refer for Employment the Charging Parties?

At the Respondent Union's February 1986 meeting, Cooksey Sr. publicly announced his candidacy for union office. Prior to this meeting, in the fall of 1985, he testified that he had privately advised Pezzenti of his intention to seek union office and Pezzenti was supportive of Cooksey Sr. at the time. In January 1986 Cooksey Sr. also shared his intention to seek union office with Joseph Klecman the steward on the Ceco jobsite where both men worked. Eventually, Cooksey Sr. was approached by Lopreato on the Ceco jobsite in March 1986 when Lopreato asked Cooksey Sr. whether he did not like Lopreato and the way Lopreato was running things. Cooksey Sr. said he had some disagreements with Lopreato's leadership of the Union and added he did not have an opinion of Lopreato as a person. Cooksey Sr. also told Lopreato he wanted a seat on the executive board and have a say with respect to what was happening with pensions. According to Cooksey Sr., Lopreato replied that, if he wanted a seat on the board, Lopreato would put him on the

board, and asked Cooksey Sr. why he wanted to have "this stupid election?" Cooksey Sr. stated that he advised Lopreato he was not interested in such an arrangement, at which time Lopreato wished him luck and the conversation ended. Lopreato generally agreed with Cooksey Sr.'s description of the conversation except denied offering Cooksey Sr. a position on the executive board.

I credit Lopreato's denial of offering Cooksey Sr. a position on the executive board, because had he done so, there was no reason for Cooksey Sr. to refuse. Also, there is evidence that there was no vacancy on the executive board available.

Immediately following this conversation, Cooksey Sr. testified he observed Lopreato and Klecman talking. Shortly thereafter, Cooksey Sr. was approached by Klecman, who said, "Billy, I wish you would change your mind, I like you, we're old timers together. We started out shoveling together, shoveling concrete 20 years ago, you don't need this. You're going to get hurt here, and I don't mean physically . . . but you'll never work again. Your family's going to be in trouble." Cooksey Sr. responded by stating that such strategies were outdated and were no longer used, to which he claimed Klecman replied, "well, you'll work, Billy, but you'll work out in Putnam." Cooksey Sr. explained the reference to Putnam is analogous to a Russian being exiled to Siberia, and that a laborer assigned to Putnam would be out in the wilds far away from Hartford. Klecman did not dispute the remarks attributed to him by Cooksey Sr.

Cooksey Sr. testified that he was employed as a labor foreman at the Ceco jobsite until he was laid off for lack of work on May 2, 1986. Among Cooksey Sr.'s duties as foreman was to determine when it was appropriate for his employer to hire more laborers or to cut back the crew. Such an issue presented itself at the jobsite on April 17, 1986, when Cooksey Sr. and General Labor Foreman Joe Dumont discussed the staffing that would be necessary for a planned push on the job. In order to handle the increased pace of construction, it was decided that seven laborers would be hired on the jobsite. Consistent with the hiring hall practice, Cooksey Sr. advised Labor Steward Joe Klecman that seven new laborers were needed for April 18, and Klecman stated that he would take care of it.

The union hiring hall is run out of a facility on Wyllis Street in Hartford located approximately 1-1/2 miles from the main union hall on Ledyard Street. The hiring hall is open Monday through Friday, from 7 until 9 a.m., and is currently managed by dispatcher William DelGaizo.

According to DelGaizo he refers people from the hiring hall on a first-in first-out basis each day. Thus, DelGaizo claims that as individuals looking for work entered the hall, they sign their names on the list and, as jobs are phoned into the hall from Ledyard Street, DelGaizo would offer jobs to the first person on the list and proceed down the list with each succeeding job. Seniority on the list is good for 1 day only, and an individual's failure to sign the list on succeeding days will result in his not being considered for referral. When an individual is referred out of the Wyllis Street hall, DelGaizo will give that person a referral slip which the person is supposed to take to the Ledyard Street hall. This is turned in at Ledyard Street and exchanged for a referral card, which the individual takes to the jobsite and presents to the employer before going to work.

Although DelGaizo testified that the hiring hall's operating procedures have not changed in the 2 years he has been running the Wyllis Street operation, there is evidence in the record that the hiring hall's operating procedures have been subject to recent change. Wall testified that the first-in first-out procedure was a relatively recent procedure that began to be applied only as the hearing in this case grew near. Prior to that, according to Wall, the hiring hall used a more random process whereby DelGaizo exercised considerable discretion in picking people off the sign-in list for referral.

Klecman recalled being asked to refer laborers to the Ceco jobsite for April 18, but claimed that the order was only for six laborers. Accordingly, Klecman stated that he called the union hall and spoke to Pezzenti and arranged to have six laborers referred to Ceco's jobsite on April 18. Pezzenti offered another version of facts in this regard. According to Pezzenti, on or about April 17, Klecman called the union hall and requested that seven laborers be referred to the Ceco jobsite on April 18. Pezzenti called the hiring hall on the morning of April 18, and requested seven laborers for referral for Ceco. A short time later, six laborers arrived at the union hall for referral and Pezzenti dispatched them to the Ceco jobsite. Soon thereafter Pezzenti claimed to have received a phone call from an unidentified person from Ceco inquiring as to the status of the seventh laborer. Pezzenti said that he had advised the Ceco person that the seventh person had yet to show up for referral. The Ceco person then said that the seventh person was no longer needed, and that the position was canceled. Cooksey Sr. denied that the order for the seventh laborer was ever canceled.

1. William Cooksey Jr.

The seventh laborer to be referred to Ceco on the morning of April 18 was Cooksey's son, Cooksey Jr. Cooksey Jr. testified that he was in the union hiring hall on the morning of April 18 when the call came in for five laborers to do stripping work at Ceco. Including Cooksey Jr., there were only four laborers in the hall at the time, and all four received a preliminary referral slip for the Ceco job. This slip must be presented to an official at Ledyard Street hall where a second slip is issued to be presented to the employer at the jobsite. Cooksey Jr. testified that it was necessary to produce a union book to receive a second referral slip and that he had forgotten his book at his father's house that morning. Accordingly, Cooksey Jr. stopped by his father's house on the way to the union hall and arrived at the hall just as the other three laborers who were referred to Ceco were leaving. When Cooksey Jr. entered the hall, Pezzenti advised him that he was late for the referral and had, therefore, been replaced. Cooksey Jr. then proceeded to the Ceco jobsite without the second referral slip and observed Klecman signing on seven laborers to work. Cooksey Jr. noticed that two of the individuals who were being signed up had not been present at the hiring hall, so he asked them how they came to find out about the Ceco job. According to Cooksey Jr. they replied that Pezzenti had called them at their home and instructed them to be on the job at 7 a.m. the following day. The identity of these individuals was not disclosed. Cooksey Jr. then advised his father of what had happened and Cooksey Sr. advised his son to get himself an attorney.

Cooksey Jr. acted on his father's advise and consulted with Attorney Dave Kamins. Kamins then contacted Union

Attorney Michael Barse and an agreement was reached whereby Lopreato arranged for Cooksey Jr. to report to work at Ceco on April 28. Cooksey Jr. was instructed to pick up a referral slip from the union hall, which would then direct him to employment with Ceco. Cooksey Jr. reported to the union hall as scheduled and received a referral slip from Pezzenti which said that Cooksey Jr. was to report to Klecman who was to be waiting at the jobsite. When Cooksey Jr. arrived at the jobsite, Klecman was nowhere to be found. Cooksey Jr. waited for about an hour for Klecman to arrive and asked others who were present whether they had seen Klecman. No one was able to help Cooksey Jr. to find Klecman, so Cooksey Jr. went into an office trailer and asked employee Lena Kilroy whether she had seen Klecman. Cooksey Jr. explained that he had been referred to Ceco from the union hall and Kilroy responded by saying that Klecman had said no one was to be put to work that day because there were too many employees already. Cooksey Jr. then left the jobsite without ever seeing Klecman.

Klecman's account of the morning of April 18 contradicts Pezzenti's. Pezzenti stated, as noted above, that Ceco canceled one of the requested laborers and that Klecman gave no indication that any position had been canceled and stated that the only reason Cooksey Jr. did not go to work was that he did not have a referral slip from the union hall. Klecman expressly stated that had Cooksey Jr. returned to work on April 28 he would have gone to work, because the employer needed six laborers and only five had been sent. Klecman also stated that on occasion, when a worker showed up without a proper referral slip, he called the union hall to clear up the matter. He offered no explanation why he did not simply call the union hall to verify Cooksey Jr.'s referral since he testified he needed another man.

Cooksey Jr. continued to solicit work from Respondent Union's hiring hall following the events at Ceco. On the morning of May 22, 1986, Cooksey Jr. was one of four or five individuals present at the hiring hall when it opened. Respondent Union President Charles LaConche was running the hiring hall that day and received a call for three laborers with cards to report to the Putnam bridge. Cooksey Jr. stated that he was third in line at the time and the two individuals who were in front of him were handed referral slips for the job by LaConche. At that point, LaConche supposedly asked, "[I]s there anybody else that wants to go?" Neither of the two individuals who were in line behind Cooksey Jr. had cards and Cooksey Jr. said that he would take the job and LaConche said, "[N]o, I can't give you the slip." Cooksey Jr. asked LaConche why he could not be given the slip, but LaConche ignored him and phoned Pezzenti at the union hall and said that "well I only got two guys with cards who will take the job, you'll either have to find someone else or you'll have to wait until someone comes in."

LaConche's account of the events of May 22 is far different from that of Cooksey Jr. According to LaConche, he opened the Wyllis Street hiring hall at 7 a.m. and the phone was ringing as he passed through the door. While he picked up the phone, the laborers began signing the hiring hall register. The phone call was from Pezzenti who said that at least three laborers were needed for jackhammer work at the Putnam bridge. LaConche then reviewed the list and the first person rejected the job while the second person accepted. The third person on the list also accepted the position at

which point Cooksey Jr. spoke up and said that he would also take the job. LaConche told him to wait a minute as Cooksey Jr. was just in the process of signing in and others were ahead of him on the list. According to LaConche, he told Cooksey Jr. that he could have the job if nobody wanted it. LaConche claimed that Cooksey Jr. stated that he did not believe that LaConche wanted to give him the job, and Cooksey Jr. turned around and walked out of the hiring hall. LaConche said that the job was never filled that morning and had Cooksey Jr. returned the job would have been his.

Respondent Union introduced records to show that Cooksey Jr. received job referrals both before and after his father's announced intention to run for office in February 1986. As pertinent, Cooksey Jr. was referred in January, February, July, August, September, October, and November 1986.

The General Counsel urges the instances involving Cooksey Jr. in the spring of 1986 were in a reprisal for his father's candidacy for office. It is Respondent's position that it was nothing more than a misunderstanding and that the Union had no intention to discriminate against Cooksey Jr. or take any reprisal against him for his father's action.

I believe the evidence establishes that the Union's leadership did decide to punish Cooksey Sr. for his opposition and did so, *inter alia*, by discriminating against his son in job referrals for a period of time before and after the election. I credit Cooksey Sr. and Cooksey Jr.'s version of both the Klecman threat of reprisal and the subsequent runaround Cooksey Jr. received with respect to the Ceco and Putnam jobs.

Klecman and Pezzenti contradict each other and Klecman would not even follow his admitted practice of verifying a referral by phone for Cooksey Jr. It should be remembered that he would not extend this evidently common courtesy to the son of his friend and fellow foreman. Even after Cooksey Jr. retained counsel, the Union continued to give him the runaround. Klecman's statement that had Cooksey Jr. stayed on the Ceco jobsite until he returned on the second Ceco referral sounds suspiciously similar to LaConche's statement that had Cooksey not left the hiring hall he would have been referred to the Putnam bridge job. It appears unlikely to me that Cooksey Jr. would have left the hiring hall before being certain that he was not getting the Putnam job as he had hired an attorney to assure he would not be discriminated against. I credit Cooksey Jr.'s version of the hiring hall incident involving LaConche. Accordingly, I find that Respondent's discrimination in referrals with respect to Cooksey Jr. is in violation of the Act.

2. Joseph DiLoreto

DiLoreto was a candidate for union office on Wall's slate in the June 1986 election. A few days prior to Respondent Local's May 19, 1986 nominating meeting, DiLoreto had occasion to speak to Lopreato by telephone. DiLoreto was working as labor steward at the O'Neil Construction site at Bradley Field at the time and Lopreato began the conversation by yelling and screaming and wanting to know what DiLoreto's problem was. DiLoreto said that he did not have a problem, at which point he said that Lopreato told him that he did not want DiLoreto sitting behind Gary Wall at union meetings anymore. DiLoreto stated that he could sit anywhere he wanted, and Lopreato said that "no you can't,

because you're my friend and he is not." Lopreato then reminded DiLoreto that it was Lopreato who had given him his job and continued ranting and raving for several more minutes. Eventually, DiLoreto hung up the phone and returned to work. Several minutes after DiLoreto's phone conversation with Lopreato, Lopreato again called DiLoreto at the jobsite. Lopreato told DiLoreto that DiLoreto had to come to the union hall immediately because Lopreato had a lot of problems with the O'Neil Construction job. DiLoreto replied that he was working overtime on the job and had a deadline to meet and he preferred to work and would report to Lopreato the following day. Lopreato said that it was essential for DiLoreto to come to the union hall that evening, so DiLoreto hung up the phone and headed for Hartford. When DiLoreto arrived at the union hall he was met by Lopreato who wanted to know what had happened on the jobsite earlier that day when Charles LaConche had visited. DiLoreto reviewed the events of the day after which Lopreato asked him what he thought of Lopreato's administration. DiLoreto said that he did not know, and Lopreato said that he was talking to DiLoreto man to man, Italian to Italian, and just wanted to know what DiLoreto thought of his administration. DiLoreto replied that he thought it might be time for some changes, at which point Lopreato threw his hands in the air and said "that's all I wanted to hear. That's all, there will be changes made. Go ahead and unionize." Lopreato then began laughing and DiLoreto left the hall.

DiLoreto was laid off from his job on June 13, 1986, due to lack of work. Following his layoff, DiLoreto reported to the Wyllis Street hiring hall on a daily basis following the June 14 election. On June 30, DiLoreto signed in at the hall consistent with his usual practice. There were about 40 laborers present that day and at one point William DelGaizo who was running the hall that day shouted out that he had a job for 1 man at Bradley Field for 1 day. No one responded, so DelGaizo announced availability a second time. At that point, DiLoreto said that he would take the job, but DelGaizo ignored him and continued to solicit laborers for the position. When no one came forward, DelGaizo picked up the phone and DiLoreto overheard him say to someone at the other end, "Joe DiLoreto wants this job. Uh-huh, I know, I know. Forty men are here and no one wants it, uh-huh, uh-huh, OK." DelGaizo then hung up the phone and DiLoreto asked him if he could go to the union hall or what was he supposed to do. DelGaizo replied that the union hall would call back, something which DiLoreto found unusual. In any event, DiLoreto waited at the hiring hall for another 20 to 25 minutes and then left. DiLoreto returned to the hiring hall the following morning and asked DelGaizo what had happened to the job he had volunteered for the previous day. DelGaizo advised DiLoreto that the job had been canceled and that the contractor did not need anyone. DiLoreto asked DelGaizo where he had received his information and DelGaizo said that he had spoken to Charles LaConche. DiLoreto then went to the Union's Ledyard Street hall to see LaConche. DiLoreto asked LaConche why he had been refused work the proceeding day, and LaConche replied that DiLoreto had not been refused work. LaConche said that he had called back to the hall to send DiLoreto to the job, but DiLoreto was no longer there so the job went to someone else. DiLoreto then said that he did not believe his being told to wait was standard operating procedure, to which LaConche replied, "don't

think we're trying to keep you out there because there are a lot of guys have been out of work longer than you." In regard to this incident, DelGaizo testified that he attempted to call DiLoreto's name for the job in question but DiLoreto was not in the hall because he had gone to get coffee without checking with DelGaizo. This does not square with DiLoreto's claim that DelGaizo told him that the job he volunteered for was canceled. LaConche testified that he told DiLoreto that he had not been referred out because he was not present when LaConche called back and there had been other people in the hall that had been out of work longer than he had been and that as local president he had been too busy to bother with individual concerns of members and he wanted to make it clear that DiLoreto was not being kept out of work. Since the date of the incident in question, DiLoreto was referred for work on July 7, 1986, and to the date of the hearing, he missed only some 3 weeks of work. All of his jobs had come from referral from the hiring hall, including his present position as a laborer for Partitions, Inc. at the Bradley Field site. DiLoreto filed a charge with the Board on June 30, 1986. DelGaizo testified that he had not referred DiLoreto out to the job because he was out for coffee and that to compensate him for the misunderstanding, several days later had referred him out of turn with the understanding of the other men in hall.

Again, I find that the union leadership has discriminated against one of its opposition. That it did not continue to do so after a charge was filed with the Board does not excuse the initial act. The conflicting stories told by LaConche and DelGaizo are not persuasive to me. I credit DiLoreto's account of the hiring hall incident and agree it is unusual for DelGaizo to check with LaConche before giving a job referral to a particular worker. It is also not part of the Respondent's stated procedure for operation of the Wyllis Street hall. I find that Respondent Union discriminated against DiLoreto by refusing to refer him to work available on June 30 and, thus, violated the Act.

3. Cooksey Sr.

Following his layoff, Cooksey Sr. reported to the hiring hall almost on a daily basis for several months before being referred to work in August 1986. Cooksey Sr. acknowledged that prior to that referral, he did have occasion to accept 1-day employment assignments through the hiring hall. However, he turned down these opportunities and testified that 1-day jobs would have detracted from his reputation as an experienced laborer and foreman. He testified that 1-day laborers were generally regarded as irresponsible by construction contractors. Eventually, however, he testified that it became necessary to volunteer for 1-day assignments because he became desperate for money as a result of the Union's failure to refer him to more lucrative employment. He testified that between the time of his layoff and his eventual referral in August, he observed several people receive referrals on more than one occasion, such as Joe Lockhart, Jimmy Cunningham, Frank Freeman, Jim Lawson, Steve Manos, Manny Gazara, and Dino Jentile. Some of these individuals were referred out as many as three or four times before Cooksey Sr. received his first referral.

Cooksey Sr. also testified that he experienced problems with operation of the hiring hall in December 1986, when he found himself at the top of the list one morning with no re-

ferral. Cooksey Sr. subsequently learned that Fusco Construction was hiring a number of laborers that week and complained to Lopreato that the Respondent Union was referring laborers to Fusco without going through the Wyllis Street hall. At that point, Lopreato told Cooksey Sr. he could have a job if he wanted, and the next day Cooksey Sr. was referred to work. With respect to Cooksey Sr.'s testimony, Pezzenti denied that he had a conversation with Cooksey Sr. in the fall of 1985. Montiero, job superintendent for the Ceco corporation testified that he laid off Cooksey Sr. due to an unacceptable work performance. He also testified that Lopreato in April 1986 tried to convince him (Montiero) to retain Cooksey Sr. I do not credit any of Montiero's testimony as it was internally contradictory and appeared contrived. Respondent Union also points out that Cooksey Sr. testified that he did not take 1-day referrals and that Cooksey Sr. also testified that after his layoff he was depressed and he did not go to the union hall to seek job referrals. It further urges in those cases where Cooksey claims that certain laborers got referrals though he signed in at the hall ahead of them, Cooksey Sr. had no knowledge of whether those men had worked for the same employer previously or had a special skill or experience which was required for the job. Further, Respondent argues that even after Cooksey Sr. had an argument with Lopreato in December 1986 about Cooksey Sr. not being referred to a job at Fusco Construction, Cooksey Sr. was referred from the hall the next day to an assignment with the N & S Dunn Co.

I credit Cooksey Sr.'s testimony about the incidences of being passed up for referrals and find that he too, like his son and DiLoreto, was discriminated against in referrals. I also credit his reasons for not taking 1-day jobs and note that the Board has held that 1-day referrals and onerous referrals can reflect discrimination just as no referral at all would. Cooksey Sr. is a senior and an experienced laborer in the Local Union and not the type laborer who would ordinarily get such lessor referrals.

4. Gary Wall

Gary Wall also testified that he experienced problems finding work from the hiring hall following his layoff from Respondent DCI. Wall admitted he did not report to the hiring hall from February until September 1986. However, the Respondent Union records revealed that at least a month passed before Wall was referred for work. As I have already made a separate finding that Wall was discriminated against by the Union when it successfully kept him from being recalled from layoff at Respondent DCI, I find there is sufficient evidence to justify a separate finding that Wall was discriminated against in the hiring hall referral system. Wall testified that the jobs that he was referred to were the worst type available, being jackhammer and underpinning jobs. These jobs are not normally given to a man of Wall's age. I therefore find, though the evidence is not as strong as with the other three Charging Parties, that Wall was unlawfully discriminated against in the hiring hall referral system as a continuation of the discrimination begun when the Union sought to have him removed from the DCI jobsite and subsequently caused him not to be recalled.

D. Did the Respondent Union Violate the Act by Operating an Exclusive Hiring Hall Without Objective Criteria or Standards for Referrals?

It is the General Counsel's position that the Union operates an exclusive hiring hall at least with respect to the AGC and CCIA member contractors. The exclusivity is apparent from this provision in the AGC collective-bargaining agreement:

The local union having jurisdiction shall be recognized as the principal source of laborers and shall be given the first opportunity to refer qualified applicants for employment. The Employer shall be the sole judge to whether or not the men furnished are qualified. The Employer reserves the right to transfer or rehire laborers, provided for those laborers rehired, the Employer shall notify the Union of the rehiring within 48-hours of the date of rehiring.

The CCIA agreement which is almost identical to the AGC contract quoted except that the notice requirement is not subject to the 48-hour time limit.

On August 1, 1986, Lopreato attended a meeting at the CCIA office with CCIA President Marvin Morganbesser and other union and employer representatives. Among the subjects discussed at this meeting was the contractual language pertaining to the Union's hiring hall. Lopreato testified that the language was discussed in the context of the employer's right to transfer employees from one local jurisdiction to another. However, the language of the letters that were subsequently written confirming what had been agreed to at the meeting indicates that the discussion with respect to the hiring hall was broader than Lopreato indicates. By letter dated August 5, 1986, Lopreato advised the business managers of Laborers' Local Nos. 455 and 665 that although employers were free to move incumbent employees from one jurisdiction to another, that "at the same time, the employer should telephone the Local Union having jurisdiction to allow that local Union an opportunity to refer new employee to that job." In a subsequent letter written on August 12, 1986, from Morganbesser to Lopreato, after discussing the transfer issue, Morganbesser separately addressed the employer's obligation with respect to new hires and acknowledged that the employers had the duty to give the Local Union where the work is performed the first opportunity to refer qualified applicants for employment. Specifically, the letter states, "At the August 1, 1986 meeting it was also agreed that if a contractor requires new employees, the Local Union where the work is to be performed must be given the first opportunity to refer qualified applicants for employment, and that the employer has the right to rehire an employee with or without intervening employment, within a 6 month period from lay-off."

In a letter on the same subject to Local Union 665 from Lopreato on August 20, Lopreato states:

Article II Section 6 of the Agreement reserves to the Employer the right to freely transfer all his regular laborer employees from job to job throughout the state of Connecticut regardless of the local Union territorial jurisdiction. The term "key men" means the regular laborer employees on the Employer's payroll.

It is also understood that if the Employer needs new applicants for employment (i.e. new employees) in the State of Connecticut, he must comply with Article II, Section 6 which recognizes the Local Union, where the job is being performed, as the principle [sic] source of laborers and must be given the first opportunity to refer such qualified applicant for employment. In addition, an employer cannot circumvent this provision by hiring a laborer in a favored local union jurisdiction in order to avoid a laborer in another local union jurisdiction.

The General Counsel points to certain testimony in the record to show that the Respondent Union intended to operate its hiring hall in an exclusive manner, consistent with the terms of its collective-bargaining agreements with the AGC and CCIA. When Joseph DiLoreto was appointed steward in 1984, for example, he testified that Pezzenti instructed him not to let anyone work on the jobsite without union approval. Cooksey Jr. testified that Pezzenti and LaConche pulled him off of a job in 1983 after he went to work as a laborer at a time he did not have a laborer's book. Cooksey Jr. was also admonished for returning to work following a recall with DCI in 1984, without advising the union hall of his return to work. According to Cooksey Jr., Pezzenti approached him on the job and "asked me who the hell I was coming down here and taking a job on my own, when there are guys at the hall who don't have a job?" Pezzenti then told Cooksey Jr. that Pezzenti was going to let him go and bring one of the people from the hiring hall up to the jobsite to replace him. After a conversation between Pezzenti and a DCI official, however, Pezzenti agreed to allow Cooksey Jr. to continue to work.

It is the position of Respondent Union that the language of the contracts is ambiguous and not responsive to the claim that the Union operates an exclusive hiring hall. It argues that the provisions require only the particular local having territorial jurisdiction be offered the first opportunity to refer qualified applicants. The contract does not by its language expressly require contractors to utilize the hall as the first, sole, or exclusive source of referral. It argues that the provisions require only that where a contractor chooses to utilize the referral hall as a source of laborers, that local having territorial jurisdiction shall have the first claim on the opportunity to refer employees. The Respondent Union argues that the letters, quoted above, support this interpretation.

On this point, I disagree with Respondent Union. The letters themselves go to great lengths to define exactly the circumstances under which employers may transfer workers from one job to another, retaining keymen, without having to utilize a local hiring hall. It would thus appear to me that the letters make clear that except in those circumstances, an employer must first look to the hiring hall of the local in whose jurisdiction work is being performed for any other employees which it chooses to hire.

On the other hand, it appears from the evidence that the Union's enforcement of its exclusive hiring hall provisions in bargaining agreements is not strictly followed. There is substantial testimony that the practice within the jurisdiction of Local 230 is that contractors have hired employees as laborers without referrals from the hiring hall on occasion, though they have utilized the hall for the bulk of the new hires.

Anthony Pelosi, general manager of Waterbury Foundation Company, a "me-too" contractor, testified that his labor foreman had hired new employees without referral from the hall and that Local 230 never complained about the practice. Pelosi testified that if the new hire is not already a member of Local 230, the employer refers the employee to the steward or the Union. Lopreato testified that such notification is required to insure compliance with the benefit fund contribution requirements. Pelosi also testified that the normal practice of the Company is when it begins a job within the jurisdiction of Local 230, it would make a preliminary call to the Local letting it know that they have a specific job starting on a certain date and would be needing men. When the work was to commence, the Company would come in with a certain number of its own men and the balance that it would need would come from the hall.

James McCarthy, vice president of American Plasterers' Company testified that his Company is a member of the AGC and although the company ordinarily uses the hiring hall within the territorial jurisdiction of the job to obtain new laborers, the contractor has hired laborers off the street without objection or protest by Local 230. In those cases, the worker is generally hired into a nonlabor position and, after a short period of time, is sent to the union hall to obtain his book and report back to work as a laborer.

Kenneth Grimm, president of Davis Acoustical Company, testified that his firm is signatory to the general president agreement which contains the same hiring hall, referral, fringe benefits, and union-security provisions as do the CCIA and AGC agreements. According to Grimm, his Company has hired laborers off the street without prior approval or objection from Local 230, although the contractor calls after such laborers are hired to notify and insure compliance with union-security and other contractual provisions. Grimm named approximately four such laborers hired in this fashion.

Hampton Watson Jr., president of Watson & Son, testified that his Company is a "me-too" signatory to the AGC agreement and has hired some laborers without referral from the hall, naming five such employees.

Seifim Moteiro, superintendent for Ceco, testified that it was his Company's practice to call the union hall when new laborers were needed.

On cross-examination, however, Motiero, recalled occasions when laborers had been hired directly off the street. On redirect, Moteiro acknowledged that this testimony was contrary to an affidavit earlier provided to the NLRB. In the affidavit, he said that he did not hire any laborers off the street and that he could not do so under the terms of his Company's collective-bargaining agreement with the Union. Moteiro testified that he realized that his affidavit was wrong after Lopreato paid a visit to him and advised him about the mistake he had made. As noted earlier, I do not consider this witness credible.

Raymond Kessler, assistant secretary of Kessler Construction Company a member of both the CCIA and AGC, testified his Company has hired laborers directly without referral from the hall and without objection from Local 230. As examples, Kessler identified two laborers so hired both of whom were referred by friends. Respondent Union called several other contractors who testified in similar fashion to those whose testimony is set out above. Each of these contractors testified that they had hired from one to approxi-

mately five employees within their memory without using the Local's hiring hall for a referral. The Union also offered as an offer of proof to put on the testimony of a substantial number of other contractors who would testify similarly.

The General Counsel urges that many laborers hired in the manner set out above are either friends or relatives of the incumbent employees, noting that the Board has held that direct hiring of such employees by an employer does not preclude a finding that a union's hiring hall is exclusive. The Respondent Union points out that the fact that some of the laborers hired without referral from the hall had been sent to the contractor by friends or relatives of current employees or management personnel does not establish that such direct hires without referral from hall had been limited to these special cases or that the contractors were obliged to use the hall as an exclusive source of laborers except in these limited circumstances.

I believe that the evidence in this record shows that the Union is contractually, at least, the first source if not the sole source to which a contractor must look for the hiring of new laborers if it is a signatory to a AGC or CCIA agreements or a "me-too" participant in such agreements within the State of Connecticut. This is true within the jurisdiction of Local 230. The fact that Local 230 has not objected to the obviously limited practice of contractors directly hiring employees without referrals from the Local hiring hall does not, in my opinion, reduce the Local Union's power to force the contractors to use its hall exclusively. That the Union has the power to require approval by it of new hires within its jurisdiction is most vividly shown in this record in the case of Gary Wall. Reference to an earlier portion of this decision will show Wall was removed from his job as steward on the DCI Northeast Plaza jobsite for hiring on two members of Local 230 without getting prior approval of the Local's hiring hall. In that case, not only was Wall removed ostensibly for hiring the two men without prior approval, the two men were also immediately removed from the jobsite. Pezzenti directly testified that one of the reasons he and Lopreato visited the Northeast Plaza jobsite the day Wall was removed as steward had to deal with the fact that the Union was the principle source of laborers for the job, inferring that they were there to enforce an exclusive hiring hall provision. Therefore, I find the Union has a contractual right to operate an exclusive hiring hall and when it chooses to enforce those contractual provisions, I find that Local 230 does in fact operate an exclusive hiring hall.

The Union admits that it has no written hiring hall rules, and I believe that the evidence in this case amply demonstrates that job referrals are often made based on a number of considerations other than the first-in first-out method of referral testified to by DelGaizo. The most glaring example of variation from this practice is the treatment given to Cooksey Jr., Cooksey Sr., DelGaizo, and to a lesser extent Wall. As noted by the General Counsel, in DiLoreto's case, the first-in first-out rule was not even cited by President LaConche in explaining why DiLoreto was not given the June 30 referral for which he had volunteered. Instead, LaConche indicated a policy whereby time out of work must be considered in determining who would be referred to a particular job. Cooksey Sr.'s testimony indicated the time out of work was not a consideration in his case as there were several individuals who were referred to work on two or more

occasions before his own referrals. Another example is Cooksey Sr.'s testimony that Lopreato arranged for him to be referred to work in December 1986 after he protested his treatment at the Wyllis Street hall. Therefore, based on these findings, I find that the Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act by failing to operate its exclusive hiring hall in an objective, consistent fashion, as demonstrated by its discriminatory treatment of Cooksey Sr., Cooksey Jr., and DelGaizo.

Summary of Conclusions

Based on the evidence of record and on an applicable Board law, I ultimately find and conclude that Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act by operating an exclusive hiring hall without objective criteria or standards for referral and by failing and refusing to refer Gary Wall, William Cooksey Jr., Joseph A. DiLoreto, and William Cooksey Sr. to employment with employer-members of the Labor Relations Division of the Associated General Contractors of Connecticut, Inc., and employer-members of the Connecticut Construction Industry Association, Inc. I further find that Respondent Union violated Section 8(b)(2) of the Act by attempting to cause the termination of Gary Wall by Respondent DCI from the DCI Northeast Plaza jobsite and by causing Respondent DCI to refuse to recall Wall from layoff at the Northeast Plaza jobsite. I find that Respondent DCI violated Section 8(a)(1) and (3) of the Act by failing and refusing to recall Gary Wall from layoff at its Northeast Plaza jobsite because of pressure from the Respondent Union.

CONCLUSIONS OF LAW

1. Respondents Development Consultants, Inc., the Ceco Corporation, the Labor Relations Division of the Associated General Contractors of Connecticut, Inc., and the Connecticut Construction Industry Association, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent Union is a labor organization within the meaning of Section 2(5) and (7) of the Act.
3. By operating its exclusive hiring hall without objective criteria or standards for referral and by failing and refusing to refer Gary Wall, William Cooksey Jr., Joseph A. DiLoreto, and William Cooksey Sr. to employment with employer-members of Labor Relations Division of the Associated General Contractors of Connecticut, Inc., and employer-members of the Connecticut Construction Industry Association, Inc., Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.
4. Respondent Union by attempting to cause the termination of Gary Wall by Respondent Development Consultants, Inc. and the Northeast Plaza jobsite and by causing Respondent Development Consultants, Inc. to refuse to recall Wall for employment after layoff at the Northeast Plaza jobsite has violated Section 8(b)(2) of the Act.
5. Respondent Development Consultants, Inc., by failing and refusing to recall Gary Wall for employment after layoff at the Northeast Plaza jobsite at the request of the Respondent Union, has violated Section 8(a)(1) and (3) of the Act.

REMEDY

Having found that the Respondents engaged in unfair labor practices, I recommend that they be directed to cease and desist from such practices and take certain affirmative action to effectuate the policies of the Act.

I have found that Respondent Laborers' Local Union No. 230 violated Section 8(b)(2) of the Act by attempting to cause the termination of Gary Wall by Respondent DCI and by causing Respondent DCI to refuse to recall Wall from layoff for employment at the Northeast Plaza jobsite, and further that Respondent DCI violated Section 8(a)(1) and (3) of the Act, by failing and refusing to recall Gary Wall from layoff at its Northeast Plaza jobsite pursuant to the unlawful request of the Union, I recommend that Gary Wall be made whole for any loss of earnings suffered as a result of the discrimination against him by payment of a sum equal to that which he would normally would have earned from the date of refusal to recall to the date that his position would have terminated due to completion of work by the crew of which he was a part, with interest, less net earnings during such period. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed as described in *Florida Steel Corp.*, 231 NLRB 651 (1977), and for periods after January 1, 1987, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173

(1987). I further order that Respondent DCI and Respondent Laborers' Local Union No. 230 are jointly and separately liable for the backpay due Gary Wall. As the Northeast Plaza project has been completed, reinstatement is not possible.

As I have found that Respondent Local 230 unlawfully denied referral to William Cooksey Sr., William Cooksey Jr., Gary Wall, and Joseph DiLoreto in violation of Section 8(b)(1)(A) and (2) of the Act, it is recommended that they be made whole for any loss of earnings suffered as a result of discrimination against them by payment to them of a sum equal to that which they would normally have earned as wages from the date of discrimination against them until such time the Respondent Union has properly referred them for employment, less net earnings during such period. Backpay and interest are to be computed as set forth above.

It is further recommended that Respondent Local 230 be ordered to maintain and operate its exclusive job referral system in a nondiscriminatory fashion based on published, objective criteria or standards, and that recordkeeping be initiated which will ensure compliance with such criteria or standards. Such records must be adequate to fully disclose the basis on which referral is made, and sufficiently accessible to enable applicants to ascertain that their hiring rights are protected and that referrals are made in a fair and impartial manner.

[Recommended Order omitted from publication.]