

**International Brotherhood of Electrical Workers,
Local 1579 (CIMCO) and A. Lake Copeland.**
Case 10-CB-5977

May 13, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On December 23, 1992, Administrative Law Judge Howard I. Grossman issued the attached decision.¹ The Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Brotherhood of Electrical Workers, Local 1579, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ On January 13, 1993, the judge issued a correction.

² The Respondent 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 relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ We do not find merit in the Respondent's exception that the judge erred in his construction of the collective-bargaining agreement by not considering sec. 4.09 which defines the term "resident" to mean, inter alia, a person who maintains a permanent home in the relevant geographic area for a period of not less than 1 year. Although the judge did not specifically mention this section of the agreement, he did find that Copeland's 1987 and 1992 unfair labor practice charges as well as the Respondent's own records showed that Copeland was indeed a resident of the relevant area. In addition, the judge noted that the Respondent had not previously made an issue of Copeland's residency, and had, in 1987, even informed Copeland that he was registered in "book 1," the same book that he currently seeks to be registered in, without requiring him to prove that he had met this residency requirement.

⁴ G.C. Exh. 4, which constitutes the 1987 CB charge referred to by the judge, was identified at the hearing, but was not formally moved into evidence. Because none of the parties have excepted to this inadvertence, we are admitting the exhibit into the record at this time.

Further we correct the following inadvertent errors made by the judge: (1) in the "Statement of the Case" section, it should read that the hearing was held in Augusta, Georgia; (2) in the second paragraph under sec. E(2), "December 1981" should read "December 1991"; (3) in the "The Remedy" section, case citations in fns. 27 and 28 should read *Dean General Contractors*, 285 NLRB 651 (1987), and *Florida Steel Corp.*, 231 NLRB 651 (1977), respectively. These errors do not affect the outcome of the case.

Susan Pease Langford, Esq., for the General Counsel.
Charles L. Wilkinson, III, Esq., of Augusta, Georgia, for the Respondent.
Lourdes Neely Coleman, Esq., of Augusta, Georgia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. The charge was filed on June 8, 1992, by A. Lake Copeland, an individual (Copeland). Complaint issued on August 31, 1992, and alleges that International Brotherhood of Electrical Workers, Local 1579 (Respondent or the Union), on about December 18, 1991, refused to refer Copeland for employment for arbitrary, capricious, and discriminatory reasons, in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act.

This case was heard before me in Atlanta, Georgia, on October 13, 1992. Thereafter, the General Counsel and Respondent filed briefs. On the basis of the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The pleadings, as amended at the hearing, establish that the Union is a labor organization within the meaning of Section 2(5) of the Act, and that it has agreements with CIMCO, Inc. and other employers requiring those employers to obtain their employees exclusively by referral from the Union's hiring hall.

The pleadings further establish that CIMCO, Inc. is a Delaware corporation with an office and place of business in Waynesboro, Georgia, where it is engaged in the construction industry as an electrical contractor. During the calendar year preceding issuance of the complaint, a representative period, CIMCO provided services valued in excess of \$50,000 to customers within the State of Georgia who, in turn, during the same period, sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Georgia. CIMCO, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The Union maintains various referral lists, or books, wherein individuals apply for employment. First priority is given to applicants whose names appear in book 1, while secondary preference is given to those whose names appear on book 2.¹ The General Counsel contends that the Union, on about December 18, 1991, discriminatorily failed to allow Copeland to be listed in book 1, and thereby caused him to be referred for employment at a time later than he would have been referred had such listing been allowed.

¹ There are lower categories of applicants, but these are not relevant here.

B. *The Referral Criteria in the Collective-Bargaining Agreement*

The Union has an agreement with the Atlanta Chapter, Augusta Division, National Electrical Contractors Association, which establishes the requirements that must be met in order to sign the Union's various out-of-work books. The agreement requires the Union to register each applicant for employment in "the highest priority group for which he qualifies." In order to be registered as a journeyman wireman or technician in "Group I," the applicant must have had 4 or more years' working experience in the trade, be a "resident of the geographical area constituting the normal construction labor market," must have passed an examination conducted by the Union or have been certified by it, and must have worked for at least 1 year in the prior 4 years under collective-bargaining agreement between the parties to the agreement.² The requirements for a listing in group II are 4 or more years experience in the trade, and the passing of an appropriate examination.³ Thus, the difference between groups I and II is that the former includes the requirements of residency and 1 year's working experience under a collective-bargaining agreement.

The agreement clarifies the residency requirement by defining the "normal construction labor market" as being located in various counties in the States of Georgia and South Carolina, including the county of Richmond, in Georgia.⁴ Groups III and IV, with lesser priority, have less stringent requirements.⁵

C. *Copeland's Union Affiliations and Employment History—the First Unfair Labor Practice Charge*

Copeland was a member of IBEW Local 570, in Tucson, Arizona. He moved to Georgia in 1970, and bought a house in Doraville. Next, Copeland moved to Augusta, Georgia, in 1985, married, and bought several properties. He was referred by the Union to Walsh Construction Company in August 1985,⁶ and left a month later for the purpose of selling his house in Doraville. On his subsequent return to the Augusta area, he was referred by the Union to the Cleveland Electric Company in November 1985. Copeland had several intermittent periods of employment at this company,⁷ to which he was referred by the Union.

Copeland was terminated by Cleveland in early 1987. He went to the Union and asked it to grieve the termination. He also stated that he was eligible to sign book 1 and requested permission to do so. Union Business Manager Yarbrough and Assistant Business Manager James E. Rooks, who handled most of the referrals, refused to allow him to sign anything more than book 2.⁸ Copeland did so, but, on April 30, 1987, filed an unfair labor practice charge against the Union. His

² G.C. Exh. 2, pp. 15–16.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ R. Exh. 3.

⁷ Copeland was employed by Cleveland during the following periods: November 4, 1985, through March 14, 1986; April 21, 1986, through November 11, 1986; and February 23, 1987, through March 17, 1987.

⁸ According to Copeland, Rooks "cursed" him and told him to get out of the office.

address in the charge is listed as being in Hephzibah, Georgia.⁹ The current charge lists his city of residence as Augusta, Georgia.¹⁰ Both Hephzibah and Augusta are located in Richmond County, Georgia.¹¹ The Union's referral records show Copeland as originally residing in Atlanta, but later in Hephzibah.¹²

Copeland testified without contradiction that the Union president called him and said that he had a referral for Copeland. The latter asked the union president whether this meant that he was on book 1 and received an affirmative answer. Copeland then went to the hall and received a referral "on the side" from the union president rather than going through the normal procedure of getting it from Assistant Business Manager Rooks.¹³ He did not actually sign book 1 but was told that he could do so. Copeland testified that he was not required to prove residency or that he had passed a journeyman's test (although he had supplied this proof at an earlier time). Nor was he required to prove that he was not on book 1 in his Arizona local—a requirement added by Respondent in this proceeding. I credit Copeland's uncontradicted testimony.

Copeland thereupon withdrew the unfair labor practice charge. The Regional Director for Region 10 wrote a letter to Respondent's counsel dated May 27, 1987.¹⁴ Counsel's reply to the Regional Director, dated June 2, 1987, repeats the foregoing contractual criteria for signing book 1, with additional comments on proof, but does not add any new requirements.¹⁵

⁹ G.C. Exh. 4.

¹⁰ G.C. Exh. 1(a).

¹¹ I take judicial notice of p. 22 of the Rand McNally Road Atlas for 1992.

¹² R. Exh. 3.

¹³ The Union's records show that Copeland was referred to a job in May 1987 with an employer listed as "Dunn." (R. Exh. 3.) Copeland stated that the name was "Miller Dunn," and that it was later acquired by the Bechtel Company.

¹⁴ I infer that the Regional Director wrote the letter based on the reference to it in counsel's response.

¹⁵ Counsel's letter reads in relevant part:

I have received your letter of May 27, 1987, concerning the above case, and I would like to clarify the record. There has been no "private settlement" between the parties as your letter indicates.

While there was no "private settlement," my understanding was that Mr. Copeland was withdrawing his charge after being told the Union's policy on signing Referral Book No. 1, and that he would be placed on it if he meets the requirements.

In order for Mr. Copeland to sign book 1, he must comply with the following requirements: he must have 4 years experience in the trade, be a resident of the Local's geographical area, have passed a Journeyman Wireman's examination given by a duly constituted Inside Construction Local Union of the I.B.E.W. or have been certified as a Journeyman Wireman by any Inside Joint Apprenticeship and Training Committee, and have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the Local and parties in the agreement.

Thus, all Mr. Copeland has to do is present some evidence of his examination or certification as a Journeyman Wireman and present evidence of his residing in this area. The best evidence of residency would be copies of his latest (1986) Federal and State income tax returns which would show his legal residence (especially since travellers deduct local living expenses). If Mr.

Continued

D. *The Alleged Refusal to Refer Copeland*

1. Summary of the evidence

Copeland was terminated by Bechtel on December 9, 1991, and thereafter visited the union hall. There is some ambiguity as to whether he did so once or twice. According to Copeland, after his discharge, he went to the hall with an attorney and asked Assistant Business Manager Rooks for permission "to sign the book." Rooks replied that Copeland needed a letter from his Tucson business agent showing that Copeland had passed the journeyman's test and was a member in good standing.

Thereafter, the Tucson business agent sent a letter to Respondent's business manager, stating that Copeland was a member of the Arizona local in good standing, had passed the necessary wireman's examination in 1964, and otherwise recommended him. This letter is dated December 18, 1991.¹⁶

According to Copeland, he and his attorney's assistant went to the hall after his receipt of a copy of the Tucson letter, and asked to "sign the Book." Rooks refused and "showed us out again," in Copeland's language. Copeland told Rooks that he wanted to draw unemployment insurance benefits. Rooks later called him at home and said that he had "signed the Book" for Copeland. Copeland testified that he had never heard of such a procedure.

Copeland sent a letter to Business Manager Yarbrough stating that he had been terminated by Bechtel on December 9, 1991, and asked the Union to grieve the termination. This letter is dated December 19, 1991.¹⁷

Rooks' testimony appears to indicate that Copeland made only one visit. Rooks agreed that Copeland and his attorney came to the hall. He professed surprise at Copeland's request to sign the book because, Rooks contended, there had not been any layoffs at Bechtel. He asked Copeland for a termination slip, but did not get one. Rooks contended that he had to know whether Copeland was unemployed before allowing him to sign the out-of-work book. Rooks told Copeland that the latter needed a termination slip, and a letter from Copeland's Tucson business agent. Rooks referred Copeland to a sign in the hall stating that an applicant had to be "unemployed to sign the out of work lists," and needed a "letter from business manager to business manager to sign the out of work Book."¹⁸ Business Manager Yarbrough agreed that this was the first time the Union had asked Copeland for such a letter.

Rooks also signed a photocopy of Copeland's dues receipt and his own business card for Copeland's use in applying for unemployment insurance benefits.

The assistant business manager asserted that he found out from the steward, after some delay, that Copeland in fact had been discharged. Accordingly, Rooks entered Copeland's name in book 2 on December 20, 1991, in order, he stated, to save Copeland a trip to the union hall. He called Copeland at home and informed him of this fact. Rooks contended that

he told Copeland he had placed the latter's name in book 2. Copeland denied that the assistant business manager was specific on this issue.

Copeland contended that Rooks knew on December 18 that Copeland had been discharged. As indicated, Copeland's letter to the Union, stating this, was dated December 19, 1991, 1 day before Rooks allegedly signed the out-of-work book for Copeland.

On February 7, 1992, Copeland's attorney sent a letter to Business Manager Yarbrough. She describes a visit which she and Copeland made to the hall on December 18, 1991. The letter avers that Rooks asked for a letter from Copeland's business agent and referred to a posted sign in the union hall. The letter concludes:

Please confirm whether or not Copeland's name appears on your out-of-work book, and, if it does appear, identify the list on which it appears and the date that it was entered. In addition, we would appreciate information regarding the status of the grievance.¹⁹

Yarbrough did not reply to this letter.

On March 5, 1992, Copeland's attorney restated the matter to Yarbrough in another letter:

On December 18 I accompanied Mr. Copeland to your office where we spoke with Mr. Edgar Rooks. Copeland advised Rooks that he had been terminated and needed to sign the out-of-work book. Rooks signed a photocopy of Copeland's dues receipt and Rooks' business card for Copeland to present to the Unemployment Office. Further, Rooks directed us to your posted notice and advised that upon receipt of a letter from the business manager agent of Copeland's local, Copeland would be able to sign the out-of-work book.²⁰

The attorney's letter included a copy of the Tucson business agent's letter and a current dues receipt. It concludes with a request for acknowledgement that Copeland's name did appear in the book, and asked for identification of the list on which his name appeared.²¹

Yarbrough did not reply to this letter.

As described hereinafter, the Union did refer Copeland for employment in September 1992. Business Manager Yarbrough testified that applicant Johnny Drake signed book 1 on December 19, 1991, the day after Copeland asked to sign the book. Drake was referred for employment on July 21, 1992, prior to Copeland's referral in September.

2. Factual analysis

The evidence warrants an inference that Copeland paid two visits to the union hall in December 1991. The first visit must have taken place on or before December 18, 1991, because the Tucson business agent's letter of that date is obviously a response to Rooks' demand for such a letter. The letter may have been sent by facsimile transmission.

All the evidence, including Rooks' testimony, shows that all he asked Copeland to produce was a letter from his Tucson business manager and a termination slip. Although the

Copeland submits this evidence, he can sign book 1 . . . [G.C. Exh. 3].

¹⁶G.C. Exh. 5.

¹⁷R. Exh. 1.

¹⁸R. Exh. 7. There is some evidence that the sign was partially covered by holiday decorations. I consider it unnecessary to resolve this issue.

¹⁹G.C. Exh. 6.

²⁰G.C. Exh. 7.

²¹Ibid.

Union had previously referred Copeland to various jobs, this was the first time it asked for a business manager's letter. On learning from the steward that Copeland had been discharged, Rooks dropped the requirement for a termination slip. The requested letter, of course, was produced almost immediately.

I credit Copeland's testimony that he returned to the union hall after the Tucson letter had been delivered, and again asked to sign the out-of-work book. Rooks refused. It is clear that Rooks later called Copeland and said that he, Rooks, had placed Copeland's name in "the book." I credit Copeland's testimony that Rooks did not mention the specific number of the book because Copeland was a more truthful witness and had better recall of the events. Respondent's later refusal to inform Copeland's attorney of the number of the book in which Copeland's name had allegedly been placed is obvious.

E. Issuance of the Complaint, and the Referral of Copeland for Employment

1. Summary of the evidence

As indicated, Copeland filed the instant charge on June 8, 1992. he testified that his attorney informed him that the Union demanded that he prove that he had not signed an out-of-work book in Tucson. On August 11, 1992, the Tucson business manager sent a message to Respondent stating that Copeland was not "on the out-of-work book" at Tucson.²²

As also indicated, complaint in this matter issued on August 31, 1992. On the following day, September 1, 1992, Business Manager Yarbrough wrote out a referral for Copeland. He contended that he called Copeland, who told him to call Copeland's attorney. Copeland testified that he received a call from Yarbrough to report at 9 p.m. to the union hall for a referral. Copeland called his attorney who advised that he would be "a fool to go down there at 9:00 at night after 2 guys done been whomped down there." I credit Copeland's testimony only to the extent that he was requested to show up for a referral at 9 p.m. but did not do so.

Copeland and his attorney appeared at the hall at about noon the following day, or shortly thereafter. After criticism from Assistant Business Manager Rooks for not appearing at 7:30 a.m.—a requirement not stated by Yarbrough according to Copeland—he was given a referral slip and reported for work the following day. He was not allowed to sign or see any of the out-of-work books.

Business Manager Yarbrough asserted that Copeland had been eligible to sign book 2 in December 1991, but did not qualify for book 1 until August 11, 1992, on receipt of the Tucson business agent's letter of that date. In explanation, Yarbrough repeated the four contractual requirements for placement in book 1—4 years' experience in the trade, residence in the prescribed geographical area, successful completion of an examination, or certification, and 1 year's work in the last 4 years under an agreement to which the Union was a party.

Yarbrough agreed that there are no other requirements in the contract for placement in book 1. However, he contended that, according to "standard practice throughout the IBEW,"

a further requirement for placement in book 1 is that the applicant supply proof that he is not in book 1 at any other local. Yarbrough had no documentary proof of this requirement.

Yarbrough and Rooks asserted that a member could only be in book 1 in the geographical area where he resided in order to obtain the priority of referral granted by book 1. IBEW members "travel," and sign book 2 in the areas which they visit. Yarbrough and Rooks have done this. According to the business manager, there is no limitation on the number of times a member can sign book 2. Yarbrough testified: "I can go across the country and sign book 2 in every local in the United States. I cannot sign book 1 nowhere except here."

Copeland, who had worked in many areas of the country, testified that "travelers" applying for work in another local are allowed to sign book 2. However, after they have been in the area for a year, most locals invite them to sign book 1 and join the local.

2. Factual conclusions

I do not credit Yarbrough's testimony as to the existence of an additional requirement for placement in book 1. The contract meticulously spells out the requirements for placement in four groups. After Copeland had filed a similar charge in 1987, the union president informed him that he was in book 1, without any such additional proof. After Copeland withdrew the earlier charge, the letter of Respondent's counsel to the Regional Director in 1987 specified the eligibility requirements for placement in book 1, but did not list the additional requirement now asserted by the Union.

When Copeland showed up at the union hall in December 1981 and asked to sign the out-of-work book, Assistant Business Manager Rooks, for the first time, told him that he needed a letter from business manager to business manager, but did not specify that this letter had to deny that Copeland was on book 1 in Tucson. The letter actually requested by Rooks was supplied promptly.

The Union's demand for proof that Copeland was not on an out-of-work book in Tucson was not made until after Copeland filed the current charge. And, even then, the demand varied from Respondent's position in this proceeding that it needed proof that Copeland was not "book 1." The fact that Respondent asked the Tucson local whether Copeland was on any out-of-work book, not merely book 1, is evident from the text of the Tucson local's reply²³ as well as Copeland's uncontradicted testimony. What possible significance could there have been to Copeland's name on book 2 in Arizona? According to Business Manager Yarbrough, an IBEW member could be on book 2 in every local in the country.

I reject Yarbrough's testimony that there was any "practice" establishing a requirement for a book 1 listing other than the requirements listed in the contract, and I credit Copeland's testimony, which is consistent with the agreement.

Although Copeland qualified for book 1 in August 1992, according to Yarbrough, he was not allowed to see or sign the book. This was a repetition of the events in 1987, when

²²G.C. Exh. 8.

²³G.C. Exh. 8.

Copeland was referred out only after filing an unfair labor practice charge but did not actually sign the book.

On December 18, 1991, Copeland obviously met the requirement of 4 years' experience in the trade.²⁴ He obviously had passed the necessary examination and was a resident of the geographical area specified in the contract.²⁵ Finally, Respondent's records show that he had worked for at least 1 year during the prior 4 years for employers with whom the Union had contracts—employers to whom the Union had referred Copeland. Although the requirement of a "business manager to business manager" letter is not stated in the contract, Copeland nonetheless provided it in December 1991, on demand. Accordingly, I conclude that he met the qualifications for placement in book 1 on December 18, 1991.

F. Legal Analysis and Conclusions

The Board has stated the applicable law in cases of this nature, with judicial approval, as follows:

The Board has held that any departure from established exclusive hiring hall procedures which results in denial of employment to an applicant falls within the class of discrimination which inherently encourages union membership, breaches the duty of fair representation owed to all hiring hall users, and violates Section 8(b)(1)(A) and (2), unless the union demonstrates that its interference with employment was pursuant to a valid union-security clause or was necessary to the effective performance of its representative function. [*Operating Engineers Local 406*, 262 NLRB 50, 51 (1982), enfd. 701 F.2d 504 (5th Cir. 1983).]

More recently, the Board reaffirmed this standard in another case which involved contractual criteria for preference in referrals which are similar to those in the instant case. Again, the Board was upheld by a circuit court of appeals. *Electrical Workers IBEW Local 211 (Atlantic Division NECA)*, 280 NLRB 85 (1986), enfd. 821 F.2d 206 (3d Cir. 1987). In that case, the union made several out-of-sequence referrals of job applicants who had signed out-of-work books after the charging parties had done so. Based on this and other evidence—the union's inaction in the face of membership applications by the charging parties—the Board found violations of Section 8(b)(1)(A) and (2) of the Act.

On appeal, the union's principal contention was that the General Counsel had not proved animus toward the charging parties. The Court of Appeals for the Third Circuit rejected this argument. Citing authority, it noted that "a union's disregard of the contractual rules for operation of a hiring hall has been considered to be strong evidence of unlawful discrimination in violation of Section 8(b)(2)." 821 F.2d at 211. The court also cited the Supreme Court's decision in *Radio Officers' Union v. NLRB*, 347 U.S. 17 (1954) to the effect that a man is held to have intended the foreseeable con-

²⁴There is no difference in the contract as to the experience required for group I or II.

²⁵The suggestion of Respondent's counsel in 1987 that Copeland supply tax returns to establish residence is not the only method of proving compliance with this requirement. Copeland's 1987 and 1992 unfair labor practice charges and Respondent's own records show that he was a resident of the specified geographical area. Respondent never made an issue of this requirement.

sequences of his conduct (id.). Based on this principle and other evidence in the case, the court enforced the Board's Order.

A similar conclusion is warranted in this case. Respondent violated its own criteria for referrals by refusing to allow Copeland to sign book 1 on December 18, 1991. It referred another applicant who signed book 1 after Copeland attempted to do so. Although the record does not show that Copeland specifically mentioned "book 1" on December 18, he had previously asserted a right to sign it in connection with his 1987 charge against the Union and had then been assured by the union president that he was on that book. Although the Union had previously referred Copeland to jobs, for the first time, in December 1991, it demanded a "business manager to business manager" letter, without specifying what the letter was supposed to contain. The letter was promptly supplied. Thereafter, Assistant Business Manager Rooks evaded the book 1 issue by allegedly signing book 2 himself for Copeland.

Any professed doubt by the Union as to the book Copeland was demanding to sign could have been resolved by a timely response from Respondent to the repeated requests from Copeland's attorney, in February and March 1992, for information as to the "list," or book, in which Copeland's name assertedly appeared. Any such response would have been prior to July 21, 1992, when—according to Yarbrough—the Union referred Johnny Drake for a job from book 1. However, Respondent did not answer counsel's requests for information. From December 1991 through September 1992, Copeland was not allowed to see or sign an out-of-work book. In 1992, as in 1987, the Union referred him to a job only after the initiation of Board proceedings. I conclude that Respondent was deliberately evasive toward Copeland as to his referral rights.

I also conclude that Respondent has not operated its hiring hall in accordance with the contractual provisions governing its procedures. I further find that, by refusing to allow Copeland to sign book 1 on December 18, 1991, to assure his priority rights to referral which inured to signatories of that book, and by failing and refusing to operate its hiring hall in accordance with the contractual provisions which established it, Respondent violated Section 8(b)(1)(A) and (2) of the Act.

CONCLUSIONS OF LAW

1. CIMCO, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 1579 is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to refer applicants for employment in accordance with the hiring hall practices and procedures set forth in its collective-bargaining agreement with the Atlanta Chapter, Augusta Division, National Electrical Contractors Association, Respondent thereby violated Section 8(b)(1)(A) and (2) of the Act.²⁶

4. By failing and refusing, since December 18, 1991, to allow A. Lake Copeland to sign book 1 maintained by it in connection with its referral system, thereby denying him the priority rights to referral set forth in the collective-bargaining

²⁶280 NLRB at 88.

agreement described above, Respondent thereby violated Section 8(b)(1)(A) and (2) of the Act.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and take certain remedial actions designed to effectuate the purposes of the Act.

I shall recommend that Respondent be required to refer applicants for employment in accordance with the provisions of its collective-bargaining agreement described above. I shall further recommend that Respondent be required to place A. Lake Copeland's name in its book 1 referral list, with date of December 18, 1991, interlining the book if necessary to place Copeland's name at that point. I shall further recommend that Respondent be ordered to refer Copeland for future employment, provided that he is not already employed, in a nondiscriminatory manner and in accordance with its contractual criteria for such referrals.

Finally, I shall recommend that Respondent be required to make Copeland whole for any loss of earnings and benefits he may have suffered because of Respondent's failure to refer him for employment as if he had been on book 1 since December 18, 1991.²⁷ Backpay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²⁸

I shall also recommend that Respondent be required to post appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I make the following recommended²⁹

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 1579, its officers, agents, and representatives, shall

1. Cease and desist from

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

(b) Failing and refusing to allow A. Lake Copeland to sign book 1 of its referral system, maintained in accordance with the collective-bargaining agreement described above, and from failing and refusing to refer Copeland for employment

²⁷This determination will be made in a compliance proceeding. *Dean General Contractors*, 285 NLRB 473 (1987).

²⁸Under *New Horizons*, interest is computed at the "short term Federal rate" for underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 281 NLRB 651 (1977).

²⁹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in accordance with the priority system thereby established, as long as he meets the requirements for placement in book 1.

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

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

(a) Operate its exclusive hiring hall in accordance with the practices and procedures set forth in its collective-bargaining agreement with the Atlanta Chapter, Augusta Division, National Electrical Contractors Association.

(b) Effective December 18, 1991, place A. Lake Copeland's name in book 1 of its hiring hall established pursuant to the provisions of the collective-bargaining agreement described above, and refer him for employment in accordance with those principles, as long as he meets the requirement for placement in book 1 as set forth in the collective-bargaining agreement.

(c) Make A. Lake Copeland whole for any loss of earnings he may have suffered because of Respondent's discrimination against him, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all job registration and referral records and any other documents or records showing job referrals and work assignments, and the basis for making such referrals and assignments, job applicants, and registrants which are necessary to compute and analyze the amount of backpay due to Copeland, and to determine his right to referral to jobs under the terms of this Order.

(e) Post at all places where notices to employees, applicants for referral, and members are posted copies of the attached notice marked "Appendix."³⁰ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

³⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT fail or refuse to refer applicants for employment in accordance with the hiring hall practices and procedures set forth in our collective-bargaining agreement with the Atlanta Chapter, Augusta Division, National Electrical Contractors Association.

WE WILL NOT fail or refuse to allow A. Lake Copeland to sign book 1 of our referral system, or fail or refuse to refer him for employment in accordance with the priority system established by book 1, as long as he meets the requirements for placement in book 1.

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

WE WILL operate our exclusive hiring hall in accordance with the procedures set out in our collective-bargaining agreement with the Atlanta Chapter, Augusta Division, National Electrical Contractors Association.

WE WILL place A. Lake Copeland's name in book 1 effective December 18, 1991, and WE WILL refer him out for employment in accordance with our collective-bargaining agreement described above, as long as he meets the requirements for placement in book 1.

WE WILL make A. Lake Copeland whole, with interest, for any losses he may have suffered because of our discrimination against him.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1579