

Millwrights & Machinery Erectors Union Local 102, a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Millwright Employers Association) and James Taverner.
Cases 32-CB-3967 and 32-CB-4089

July 14, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

On May 18, 1994, Administrative Law Judge Timothy D. Nelson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a cross-exception and 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 briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² as modified and to adopt the recommended Order.

The judge found, inter alia, that the Respondent violated Section 8(b)(1)(A) of the Act by instructing Charging Party Taverner not to take notes of hiring hall registrants' telephone or social security numbers from the Respondent's hiring hall dispatch records. We agree with the judge that instructing Taverner not to take notes of the telephone numbers violated Section 8(b)(1)(A). However, unlike the judge, we see no apparent need for Taverner to obtain registrants' social security numbers to ascertain whether he has been fairly treated with respect to obtaining job referrals. Further, neither Taverner nor the General Counsel has argued that this information is necessary to Taverner, and the record fails to demonstrate such a need. There-

¹The 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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²We agree with the judge that the Respondent's September 1992 denials of Taverner's requests to examine the March-September 1992 dispatch records violated Sec. 8(b)(1)(A) and that reinstatement of this complaint allegation was proper. Thus, we find it unnecessary to pass on the judge's discussion of whether the Respondent could lawfully have denied requests for dispatch records dating back further than 6 months.

We grant the General Counsel's cross-exception and note that the General Counsel at hearing did not, as indicated by the judge, take the position that a hiring hall user's right to examine a union's hiring hall records is statutorily limited to records dating back no further than 6 months.

We also find it unnecessary to pass on the discussion in fn. 5 of the judge's decision.

fore, we decline to adopt the judge's conclusion that by instructing Taverner not to take notes of registrants' social security numbers the Respondent violated Section 8(b)(1)(A). See *Iron Workers Local 27 (Morrison-Knudson)*, 313 NLRB 215, 218 (1993).

Taverner's failure to demonstrate a need for registrants' social security numbers, however, does not justify the Respondent's blanket refusal to permit Taverner to photocopy its dispatch records, which refusal the judge also found, and we agree, violated Section 8(b)(1)(A). Accordingly, although we adopt the judge's recommended Order requiring the Respondent to permit Taverner to look at, take notes about, or photocopy its dispatch records, we do not require the Respondent to afford Taverner access to the registrants' social security numbers.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Millwrights & Machinery Erectors Union Local 102, a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Oakland, California, its officers, agents, and representatives, shall take the action set forth in the Order.

Sharon Chabon, Esq., for the General Counsel.

Michael B. Roger, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent.

James Taverner, of San Mateo, California, pro se, as the Charging Party.

DECISION

STATEMENT OF THE CASE

TIMOTHY D. NELSON, Administrative Law Judge. In these consolidated cases, the Board's General Counsel, acting through the Regional Director for Region 32, contends generally that Millwrights Local 102 (the Respondent) violated its duty of fair representation under Section 8(b)(1)(A) of the Act by arbitrarily refusing in various ways to give the Charging Party, James Taverner, reasonable access to hiring hall records. I heard the cases in trial in Oakland, California, on January 31, 1994. The litigation focused on a series of encounters during the period September 1992 through August 1993 between Taverner, a jobseeker and member of the Respondent, and Edward Vincent, the Respondent's business manager.

These are the procedural developments that brought the cases to trial: Taverner filed the first unfair labor practice charge against the Respondent on September 10, 1992, in Case 32-CB-3967. The Regional Director for Region 32 investigated this charge and issued a complaint against the Respondent on October 30; this complaint alleged in substance that Taverner had requested the Respondent on or about September 2 to "permit [Taverner] to examine certain of its records pertaining to dispatches from its Hiring Hall," and that the Respondent violated Section 8(b)(1)(A) by refusing

this request “without court order.” This case was settled on February 25, 1993, when the Regional Director approved and became a party to what is called within this Agency an “informal” settlement agreement, one that Taverner and the Respondent had signed days earlier. The instrument of settlement was a two-page document; its first page contained mostly boilerplate language embodying the settlement terms; its second page was a specimen “Notice to Members” (notice).¹ The Respondent, although not admitting that it had violated the Act, agreed in the settlement to post the notice for 60 days and to “comply with all [its] terms and provisions.” The notice contained a single promise, as follows:

WE WILL NOT arbitrarily refuse to honor requests for information made by employees who have a reasonable need therefor, pertaining to the referral of members of the Union and other individuals who utilize our hiring hall services to obtain employment [sic] referrals with [sic] employers.

For his part, the Regional Director, on behalf of the General Counsel, agreed in the settlement that, “[c]ontingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case.”

On May 5, 1993, Taverner filed a new charge against the Respondent, docketed as Case 32-CB-4089. On June 28, after investigating, the Regional Director issued an “Order Withdrawing Approval of Settlement Agreement, Order Consolidating Cases, and Consolidated Complaint and Notice of Hearing.” (Within that multipurpose set of orders and pleadings the Regional Director stated, *inter alia*, “It has been determined that . . . Respondent has failed to discharge its obligations under [the] Settlement Agreement.”) The consolidated complaint thus issued was later superseded by yet another “Order Consolidating Cases, and Amended Consolidated Complaint and Notice of Hearing” issued by the Regional Director on November 22, 1993, this one incorporating a more recent charge by Taverner—in Case 32-CB-4175—and additional allegations of wrongdoing by the Respondent pertaining to certain intraunion discipline against Taverner. However, on January 27, 1994, the Regional Director issued an order severing Case 32-CB-4175, based on a settlement agreement in that case, and the intraunion discipline issues raised in that case are not before me.

When I opened the trial record on January 31, 1994, counsel for the General Counsel submitted the prosecution’s final, superseding complaint document, this one captioned “Second Amended Consolidated Complaint.”² This ultimate complaint (hereafter the complaint) makes the following substantive claims against the Respondent, each of which the Respondent denies:

[par. 9] (a) On or about September 2, 1992, Taverner orally requested that Respondent permit him to examine

¹ The first page of the settlement agreement inadvertently referred to “Case 32-CB-3927,” but the notice correctly identified the case as “32-CB-3967.”

² This document, received as G.C. Exh. 2, contains no signature, nor date of issuance, perhaps by inadvertence. It nevertheless reflected the General Counsel’s current and most complete expression of the substantive claims made against the Respondent in these cases.

certain of its records pertaining to dispatches from its Hiring Hall, herein called The Information I.

(b) On or about an unspecified date in early March 1993, June 23, 1993, and an unspecified date in August 1993, Taverner orally requested that Respondent permit him to examine certain of its records and/or to provide him with copies of certain of its records pertaining to dispatches from its Hiring Hall, herein called The Information II.

(c) Since on or about September 2, 1992 . . . Respondent has either refused to provide The Information I to Taverner or to properly grant him access to The Information I “without Court Order.”

(d) Since the unspecified date in March 1993 . . . Respondent has refused to meaningfully provide the Information II to Taverner, including by refusing to provide copies of The Information II to Taverner and by refusing to allow Taverner to make notes of The Information II.

[par. 10] By the acts and conduct described above in paragraphs 9(c) and (d), and by each of said acts, Respondent has breached its duty of fair representation and thereby has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A).

In addition, in what I judge was an attempt, *sub silentio*, to amend the complaint by broadening it, counsel for the General Counsel announced near the close of her case-in-chief that the complaint intended to call into legal question the Respondent’s alleged refusal, throughout the 11-month period in question, to furnish Taverner with certain employer “lists” (i.e., lists presumed by Taverner and the General Counsel to contain names, addresses, and telephone numbers of employers and their hiring agents). These employer lists were matters about which Taverner had testified (seemingly incidentally) without objection. The Respondent, arguing that it never had notice that the furnishing of employer lists was at issue, objected to the General Counsel’s midtrial announcement, but the Respondent thereafter litigated at least one question associated with the matter by calling Vincent to testify, contrary to Taverner, that he had, in fact, furnished Taverner with copies of the requested lists.

I judge that the complaint gave no notice whatsoever that the Respondent’s alleged failure to turn over employer lists might be one of the subjects of this prosecution. Thus, as a matter of English construction, I remain entirely unpersuaded by the General Counsel’s argument during the trial and on brief that the language in the complaint referring to “records . . . pertaining to *dispatches*” was “broad enough to cover” documents such as the employer lists in question.³ And espe-

³ It may be seen that the complaint fails to identify precisely what information Taverner requested from the Respondent at the various times in 1992 and 1993 when he allegedly sought what the Regional Director chose to call in the complaint for shorthand purposes “The Information I” and “The Information II.” But at least the complaint clearly states that all the information sought by Taverner from the Respondent at all times was information to be found in the form of “records . . . pertaining to *dispatches* from its Hiring Hall” (my emphasis), which the Respondent is alleged either to have flatly refused to furnish to Taverner “without court order” (“The Information I”) or later to have failed to “meaningfully provide” to Tav-

cially in the light of the theory advanced by the General Counsel for the first time on brief relating to the furnishing of these lists (discussed infra), I judge that the facts relevant to that new theory were never “fully litigated,” contrary to the General Counsel’s alternative argument in this regard.⁴ However, because these points are better understood with the overall facts and circumstances in mind, I will defer further discussion until I have recorded all of my findings.

I have studied the record, the posttrial briefs submitted by counsel for the Respondent and counsel for the General Counsel, and the authorities they invoke. Based on those studies, and on my assessments of the credibility of the two witnesses—Taverner and Vincent—I reach the following

FINDINGS OF FACT

I. THRESHOLD ELEMENTS

A. “Impact on Commerce”; the Basis of the Board’s Jurisdiction Over These Cases

The jurisdictional counts in the complaint focus on the out-of-state purchases made by employers with whom the Respondent deals in its operation of its hiring hall. The complaint does not identify the operations of any particular individual employer in this respect; rather it refers to the “collective” operations of a group of employers who employ millwrights (Taverner’s occupation) and who are members of a multiemployer bargaining association called Millwright Employers Association (MEA), which is elsewhere alleged and admitted to be bound with the Respondent to a multiemployer labor agreement providing for the operation of an exclusive hiring hall. Thus, the complaint alleges in paragraph 2, and the Respondent admits, as follows:

(a) During the past twelve months, the constituent employer-members of MEA in the course and conduct of their respective business operations, collectively purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California.

(b) MEA is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The assertions in paragraph 2(a) are factual, and based on the Respondent’s admission, I find that the facts asserted are true. The assertion in paragraph 2(b) is, by contrast, an expression of a legal conclusion—apparently, that MEA’s employer-members comprise a “single” employing entity. In

erner (“The Information II”). During trial colloquy relating to the matter of the employer “lists,” counsel for the General Counsel averred that the language in the complaint referring to “records . . . pertaining to *dispatches*” was, (a) intended by the Regional Director to refer, as well, to such employer lists, indeed, that a “deliberate judgment” had been made that Taverner had a statutory right to such lists, and (b) that the “records . . . pertaining to *dispatches*” language of the complaint was “broad enough to cover other information besides just the dispatches.” In her posttrial brief, counsel for the General Counsel continues to argue that the matter of the employer lists, although “not specifically alleged in the Second Amended Consolidated Complaint,” is nevertheless covered by par. 9(b)’s “records . . . pertaining to *dispatches*” language. (Id. at 9.)

⁴ Ibid.

the aftermath of *John Deklewa & Sons*, 282 NLRB 1375 (1987), such a conclusion is dubious insofar as it presumes that the employees of the various individual employer-members of MEA together comprise a single, appropriate bargaining unit.⁵ But for purposes of a jurisdictional analysis, the Board has more recently held that the combined operations of employers who have assigned their bargaining rights to a multiemployer association will justify asserting jurisdiction over a single employer who has delegated bargaining rights to the association, without regard to whether or not the employees of the employer-members of the association comprise an appropriate multiemployer unit, and even when the single employer targeted by the complaint does not itself satisfy the “impact” test. *Stack Electric*, 290 NLRB 575 (1988).⁶ Extending the reasoning of *Stack Electric* one step further, I find that the Respondent’s contractual and bargaining relationship with MEA makes the Respondent’s hiring hall one which has an impact on interstate commerce, because it implicates the operations of the combined group of MEA members whose aggregated out-of-state purchases are substantial enough to satisfy the “impact on commerce” test for invoking the Board’s “statutory” jurisdiction.⁷

⁵ For decades, under the so-called “merger” doctrine, when employers in the construction industry dealt collectively with a union and reached a common labor agreement applicable to all the member-employers’ operations within the union’s territorial jurisdiction, this was usually treated by the Board as enough to warrant a presumption that the employees of all the individual employers who assigned their collective-bargaining rights to the association were “merged” into a single appropriate bargaining unit. See discussion in *Deklewa*, supra, 282 NLRB at 1379. And it was by extension of that same “merger” reasoning, that for jurisdictional purposes, the “combined” operations of the employers whose employees comprised such a “multiemployer unit” was the pre-*Deklewa* basis for the Board’s finding the requisite “impact on commerce,” even where no single employer within the multiemployer association might be shown to satisfy the “impact” test. E.g., *Nelson Electric*, 241 NLRB 545, 546–547 (1979). But among many other changes in traditional legal understandings of labor relations issues in the construction industry wrought by *Deklewa* was the Board’s “abandonment” of the merger doctrine as the basis for finding that a multiemployer unit is an appropriate one for *election* purposes, a holding accompanied by a suggestion that multiemployer units in the construction industry *might* no longer be considered appropriate ones for other purposes, as well. 282 NLRB at 1385 fn. 42. Although the full implications of the Board’s abandonment of the merger doctrine remain unclear, it is arguably the case that *Deklewa* undermined the entire conceptual basis for the assertion of jurisdiction premised *solely* on the supposition that a multiemployer unit in the construction industry is an appropriate one.

⁶ Id. at 576–577, finding that when the respondents “thr[ew] in their lot with the multiemployer association . . . [they] joined forces with a group that has an indisputable impact on commerce, so far as the Act we administer is concerned.” See also *Bufo Corp.*, 291 NLRB 1015, 1016 (1988), citing *Stack Electric* for the proposition that jurisdiction could be taken over one of the two entities alleged to be an alter ego of the other based simply on its membership in a NECA multiemployer group whose combined operations met the “impact” test.

⁷ The pleadings also establish that the combined out-of-state purchases of the employer-members of MEA are enough to satisfy the higher, “discretionary” tests adopted by the Board for taking jurisdiction over employers—in this case, the “50,000 direct inflow” test applicable to “nonretail” employers. *Siemens Mailing Service*, 122 NLRB 81, 85 (1958).

Accordingly, on the strength of *Stack Electric*, I find that the record affirmatively shows that the Board has jurisdiction over this prosecution.

B. Elements Required to Trigger the Application of Section 8(b)(1)(A) and the Respondent's Duty of Fair Representation Toward Taverner

Section 8(b)(1)(A) of the Act, which the Respondent is alleged to have violated, makes it unlawful for a "labor organization . . . to restrain or coerce employees in the exercise of the rights guaranteed in Section 7 [of the Act]." On its face, Section 8(b)(1)(A) sets forth at least two elements that must be established before we can even begin to address the merits of the "restraint or coercion" claim: The Respondent must be shown to be a "labor organization," and its actions must be shown to have affected "employees," both of which quoted terms are defined in the Act.

The first element was easily established: The Respondent's answer admits the legal conclusion pleaded in the complaint that it is a "labor organization" within the meaning of Section 2(5) of the Act. I so find, based not only on the admitted legal conclusion, but on record evidence incidentally showing, as required by Section 2(5), that the Respondent is an organization in which employees participate, and that it exists in part for the purpose of dealing with employers of persons working as millwrights within its territorial jurisdiction (roughly, all of northern California, from the Tehachapi Mountains to the Oregon border) concerning their grievances, labor disputes, rates of pay, hours of employment, or conditions of work.

The second element was likewise established: Section 2(3) of the Act intends a broad definition of the term "employee,"⁸ one that is broad enough to cover job applicants generally,⁹ and hiring hall users in particular.¹⁰ The record shows that Taverner fell into the general class of jobseekers using the Respondent's hiring hall and, therefore, that he was an "employee" for purposes of applying Section 8(b)(1)(A).

Where, as here, a union is alleged to have violated Section 8(b)(1)(A) by failing to fulfill its duty of fair representation in connection with its operation of a hiring hall, yet a third threshold element must be established by the General Counsel—that the union's hiring hall is an "exclusive" one; for absent that showing, the duty of fair representation does not attach.¹¹ In this regard, the complaint alleges and the Respondent admits that, pursuant to a certain master labor agreement between MEA and Carpenters 46 Northern California Counties Conference Board (Conference Board), the Respondent is empowered to "operate an exclusive hiring hall," and further that the agreement "contains . . . a provision requiring that Respondent be the sole and exclusive source of referrals of employees of employees for employment within [sic] the employer-members of MEA within Respondent's jurisdiction." The Respondent's admissions are enough to establish the requisite exclusivity, *prima facie*, and the Respondent makes no contrary claim on brief. Therefore,

⁸Sec. 2(3) of the Act states in pertinent part that "[t]he term employee includes any employee, and shall not be limited to the employees of a particular employer."

⁹*Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941).

¹⁰*Houston Chapter, AGC*, 143 NLRB 409, 412 (1963).

¹¹*Teamsters Local 460 (Superior Asphalt)*, 300 NLRB 441 (1990).

I so find, despite incidental evidence in the record showing that there may be arguable exceptions to the Respondent's right to function as the exclusive source of referrals to jobs with MEA member-employers.¹²

As a separate matter, I note that Taverner testified generally that it is common (although technically proscribed by the Respondent's bylaws) for millwrights to "hustle their own jobs," rather than await a referral from the hiring hall registry. This is testimony that Vincent did not specifically dispute. And remarkably, the General Counsel now maintains (opportunistically—and short-sightedly in my view) that, in fact, the Respondent "sanctioned" such self-help practices, indeed that it "sanctioned" a "'shadow' self-hiring hall." (As I elaborate in my analysis of these questions, it is on the basis of the "sanctioning" claim that the General Counsel now reasons that the Respondent violated Federal law when it failed to give Taverner copies of the "signatory employer lists" to use for purposes of job-hustling.) For other reasons, I will find the General Counsel's claims in this regard to be merely feverish and unsupported by the record. But for present purposes I simply note the irony of the General Counsel's maintaining such a claim which, if true, would negate the very "exclusivity" of the hiring hall required to be found before the Respondent's duty of fair representation even comes into existence.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Introduction

My findings will be arranged chronologically and will first address events preceding the February 25, 1993 settlement agreement. In adopting this chronological approach, I recognize that involves a certain putting of the cart before the horse, for it is well established under the "settlement bar" doctrine that the Respondent's presettlement conduct cannot normally be attacked as a violation unless it is first demonstrated by the General Counsel that the Respondent failed to comply with specific terms of the settlement or committed subsequent unfair labor practices.¹³

¹²I have in mind here generalized acknowledgments by both Taverner and Vincent that employers have certain rights to seek out workers from the hiring hall "by name" (which rights are likewise confirmed by certain provisions within the "Hiring" section of the governing MEA-Conference Board Agreement). I also have in mind provisions within that "Hiring" section of the agreement allowing "from any source" hiring by employers under certain circumstances. It appears from the cases that these arguable exceptions do not defeat "exclusivity" for purposes of finding a union duty of fair representation. *Morrison-Knudsen Co.*, 291 NLRB 250, 258–259 (1988) (authorities cited); *Carpenters Local 608 (Various Employers)*, 279 NLRB 747, 754 (1986); *Teamsters Local 328 (Blount Bros.)*, 274 NLRB 1053, 1057 (1985). Cf. *Teamsters Local 174 (Totem Beverages)*, 226 NLRB 690 (1976).

¹³*Wallace Corp. v. NLRB*, 323 U.S. 248 (1944). See also *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978), stating the "general rule that a settlement agreement with which the parties have complied bars subsequent litigation of presettlement conduct alleged to constitute unfair labor practices" (my emphasis); *Interstate Paper Supply Co.*, 251 NLRB 1423, 1424–1425 fn. 9 (1980). Moreover, these established understandings of the settlement bar doctrine are incorporated in the "Contingent on compliance . . . no further

A comment on credibility: Witnesses Taverner and Vincent agree only roughly about certain points of fact, and sharply disagree about others. Both witnesses struck me as genuinely attempting to recount material events as accurately as they could, but each witness showed understandable frailties of memory and confusion of incidents when it came to matters of sequence and detail. I was not always confident that Taverner's memory was entirely accurate or complete, but compared to Vincent, Taverner seemed to have superior powers of recall. (Given that Vincent's responsibilities involve him in hundreds of monthly contacts with scores of hiring hall registrants, whereas Taverner was required only to remember details specifically associated with his own concerns, I deem it likely that Taverner's recall was the more accurate about the details and timing of specific contacts between the two men.) Accordingly, unless I specifically note otherwise, my findings below rely on Taverner's testimony, even when it is obviously or implicitly contradicted by Vincent.

2. August–September 1992 events

By the end of the summer of 1992, Taverner, an out-of-work millwright registered on the Respondent's job referral list, suspected that he was being bypassed by the Respondent for jobs he could perform and which he thought his placement on the list entitled him to. On an uncertain date in late August or early September, he went to the Respondent's office and hiring hall and complained about this to Vincent, the Respondent's business manager. In this connection he asked Vincent for permission to "negotiate [his] own deal" (or to "hustle [his] own job") with employers signatory to the MEA-Conference Board labor agreement, despite the Respondent's general prohibition against such self-help activities. Taverner also asked Vincent in the same connection for "a list of all our signatory companies," admittedly intending to use such a "list" as a resource in a personal "job-hustling" effort.

A digression is warranted to deal with the subject of Taverner's request (here and several times later) for a "signatory company" list, which he also referred to at times as a "contact list": Taverner supposed that this list contained the name of the agent for each contractor responsible for hiring. There is no question that the Respondent maintains copies of such lists in its offices. Crediting Vincent's undisputed testimony fully for the remaining findings in this paragraph, the Respondent actually keeps copies of two contractor "lists" in its offices, both showing not only the names of millwright-employing contractors, but also the names and telephone numbers of "contact" representatives for each contractor. (However, the "contact" agents thus listed are normally the persons who do the "estimating" or "bidding" on jobs, and normally, they are not the persons who do the hiring for each contractor, contrary to Taverner's supposition.) One such list, crediting Vincent, is actually "put out" by MEA—not the Respondent—and it lists the member-employers of MEA.¹⁴ The other is one compiled by the Respondent

action shall be taken" boilerplate language of the settlement agreement signed by the Regional Director and the Respondent in Case 32–CB–3967.

¹⁴Taverner admittedly got a copy of this MEA list eventually from the offices of MEA.

itself; it lists non-MEA contractors, both "independent" contractors located in the area, and "other contractors that come in from out of state from time to time."

Returning to Taverner's first meeting with Vincent, I find, crediting Taverner, that Vincent effectively refused both of Taverner's requests mentioned thus far, i.e., his request for "permission" to hustle a job,¹⁵ as well as his request for the "signatory company," or "contact" list.¹⁶ And now getting closer to what will ultimately be more legally significant matters of fact, I find, crediting Taverner, that Taverner also asked Vincent during this first visit, to be allowed "get a list of the dispatches for the past six months." And to *this* request, I find, Vincent replied that "the only way Taverner could get any [such] information out of the Local was to get a court order."¹⁷

¹⁵Taverner's account suggests that Vincent flatly denied him "permission" to hustle a job. Vincent admits that during at least one of his several encounters with Taverner concerning Taverner's complaints about being bypassed, Taverner asked his permission to hustle jobs, and further admits that he advised Taverner that "the by-laws state that we're not supposed to solicit our own work." But Vincent also recalls telling Taverner that it was "impossible for me [Vincent] to control the telephones and that I know that a lot of people do call each other on the phone at night." It is entirely irrelevant which of these two versions on the subject of "permission to hustle" is the more accurate, because the complaint does not in any way challenge Vincent's right to refuse "permission" to a hiring hall registrant to hustle a job. (And see further remarks on the general subject in my analysis of the "employer list" issue.)

¹⁶As to Taverner's request for the contractor "list(s)," Vincent stated summarily, and without reference to timing, that he "gave [Taverner] both lists." When I pressed Vincent on the timing of this supposed transaction, Vincent became increasingly vague, allowing that it was not necessarily at the time of the first of Taverner's several special visits to the hall, but could have been during an incidental discussion at the time of a general "roll call," where "we can have anywhere from 30 to 150 people around." I was not persuaded by Vincent's claim that he gave the lists to Taverner. It may be true, as Vincent also stated generally, that the Respondent regularly furnishes "both lists" to members who ask for them (especially when their reasons for so asking are to get employer "name and address" information for "unemployment [compensation] purposes," or "to try to get a rehire" from a contractor for whom they have previously worked, and to whom they are therefore entitled, under the master agreement, to be recalled "by name," without regard to their referral list priority). But I emphasize that Vincent never admitted to giving out such lists for the purpose of aiding a hiring hall registrant in a job-hustling effort. Therefore, I do not accept Vincent's testimony that he gave these lists to Taverner at *any* time. And I think it likely that the reason he did not do so was that every time Taverner asked for such a list, he admitted that he wanted the list to hustle his own job.

¹⁷Vincent recalled that he allowed Taverner during his first visit to examine the Respondent's most recent dispatch records, i.e., print-outs of the most recent 2 weeks of dispatch activity, which were apparently still in use for current dispatching. Taverner does not specifically dispute this, and I assume that Vincent's recall was accurate in this respect, but this was plainly less than fully responsive to Taverner's request for access to records for the previous 6 months of such dispatch activity. Moreover, Vincent, who was again not specific about the timing, admits that on one or more occasions, he made some reference to Taverner's needing to get a "court order" before he looked at more remote dispatch records, but implied in further testimony that he made such a statement only in reference to Taverner's later requests (*infra*) to photocopy the Respondent's

Continued

About a week later, in early September, after consulting with a Board agent, Taverner returned to the hiring hall and had a substantially identical series of exchanges with Vincent. Thus, he again asked for permission to hustle his own job, and asked for the employer "contact" list, and again asked to look at the Respondent's dispatch records for the past 6 months. Vincent again denied these requests, repeating that it would take a court order before he would let Taverner look at the dispatch records.

3. Early March 1993 encounter

As I have previously found, the unfair labor practice charge and complaint case that emerged from the 1992 events just described was settled on February 25, 1993, with the Respondent promising that it would not "arbitrarily refuse to honor requests for information made by employees who have a reasonable need therefor, pertaining to the referral of members of the Union and other individuals who utilize our hiring hall services to obtain . . . referrals [to] employers."

In early March, on the heels of this settlement, Taverner returned to the hiring hall and met again with Vincent. Taverner asked to look at dispatch records going back to March 1992, apparently figuring that he was entitled not only to the most recent 6 months' worth of records, but also those for the 6 months preceding his meeting with Vincent in early September 1992.¹⁸ This time, Vincent offered to let Taverner look at dispatch records for the most recent 6 months, but refused to make more remote records available to Taverner. Thereafter, Vincent produced the most recent 6 months' worth, comprising a 6-inch thick stack of computer printouts of registrants' names and telephone and social security numbers, with handwritten dispatching notations adjacent to them, and allowed Taverner to sit down with them at a table in a private room.

At some point during these events, Taverner asked Vincent if he could make copies of the records. Vincent admittedly refused this request, saying that he wanted to protect the "privacy" of the home telephone numbers and the social security numbers of the other registrants on the list. Taverner also claims that after Vincent refused to allow him to photocopy the records for the past 6 months, he asked Vincent to be allowed to take "notes" about their contents, and that Vincent said that he could take notes, "as long as you don't

dispatch lists. Again, I emphasize that I credit Taverner to find that Vincent effectively said during Taverner's first visit that it would take a court order before "the Local" would give Taverner any form of access to dispatch records, beyond those current records covering the previous 2 weeks.

¹⁸ Vincent claims that Taverner asked on this occasion to view hiring hall records "for the last five years." Taverner agrees somewhat vaguely that on at least one occasion, he asked to view 5 years' worth of records relating to the employment of "people that come in from out of state and worked." I don't find it necessary to decide what, precisely, Taverner may have told Vincent concerning a wish to see records going back 5 years. The General Counsel takes the position that a hiring hall user is statutorily entitled only to a 6-month "lookback" into the union's hiring hall records, and during trial colloquy, counsel for the General Counsel effectively disavowed any claim that Taverner was entitled to access to records going back more than 6 months before his first request. (Tr. 110:10-14.)

write down any specific information of anything that's not pertaining directly to you."

I doubt Taverner as to this latter testimony, in effect, a claim that Vincent was so vague in his limiting instructions about Taverner's right to take notes that Taverner could not know what notes he might be allowed to take. I give more weight to Vincent on this score, who admitted that he "indicated [to Taverner] that "we had a certain amount of privacy we had to protect and that he should not take [notes of] social security numbers or phone numbers." Moreover, Vincent recalled making "pertaining to" remarks in a different context, explaining that he told Taverner that he would be happy to answer any questions Taverner had about why a certain individual may have been dispatched *instead* of Taverner, but that he would not answer any questions Taverner might have about dispatches that did not "pertain to" Taverner—for example, a question about "Why did Joe Jones go out before John Johnson." I deem it likely that Taverner was confusing Vincent's remarks made in this latter context when he claimed that Vincent told him not to take notes of "anything that's not directly pertaining to you." Based on my sense of the likelihoods, therefore, I credit Vincent that he told Taverner on the subject of his right to take notes only that he should not record the telephone and social security numbers of registrants as part of his note-taking.

Taverner studied the records furnished by Vincent for about 2 hours. Vincent dropped in on him several times during these studies and offered to answer any questions Taverner might have, and Taverner did, in fact question Vincent concerning a few dispatches.¹⁹ Eventually, Taverner gave up his studies and left the hiring hall.

4. June encounter

Taverner reported the results of his early March visit to a Board agent in the offices of Region 32, and sometime in June, he returned to the Respondent's hall for another try. This time he again asked to review all dispatch records going back to March 1992 (i.e., 6 months prior to his first request in late August or early September 1992), and Vincent again effectively refused, but offered to allow Taverner to review the most recent 6 months' worth of dispatch records. Taverner again asked if he could make photocopies of these latter records, and Vincent again refused to allow this. Taverner also asked in the alternative to take notes of the offered records. He again says that Vincent agreed that he could take notes, but imposed the same vaguely couched limiting instruction as in the last visit—that Taverner could not take notes about anything not "pertaining to" himself. For reasons already noted, I do not credit Taverner on this latter point; rather, I find that the only restriction Vincent imposed on the taking of notes was that Taverner should not copy down the telephone and social security numbers of the registrants on the list. In addition, I find, Taverner again asked Vincent for a copy of the "signatory contractor" list so that Taverner could use the list to try to hustle his own job. Vin-

¹⁹ I credit Vincent for these findings about the nature of his drop-ins on Taverner's studies of the records. While Taverner testified that he viewed these drop-ins as a form of "harassment," his more specific testimony does not support this characterization; nor does it support the General Counsel's claim (Br. at 2) that Vincent "repeatedly interrupted" Taverner in his studies.

cent likewise refused this request.²⁰ Taverner admittedly left the Respondent's offices without attempting to review the most recent 6 months' worth of dispatch records that Vincent had proffered.

5. Final encounter in August 1993

As I have found, on June 28, 1993, the Regional Director issued his "Order Withdrawing Approval of Settlement Agreement, Order Consolidating Cases, and Consolidated Complaint and Notice of Hearing" in Cases 32-CB-3967 and 32-CB-4089. These actions were apparently based on Taverner's reports of his "early March" and "June" 1993 visits to the Respondent's hall.

On an uncertain date in August, Taverner again returned to the hiring hall and again asked to review all the records he had asked for previously. Taverner's testimony does not disclose exactly how Vincent greeted this preliminary request, but he later acknowledged implicitly that Vincent offered to let him review at least the most recent 6 months' worth of dispatch records.²¹ Thus, I presume that Vincent maintained the same position that he had previously taken, that Taverner would only be given access to the records for the last 6 months. In any case, the focus of the conversation soon shifted; for Taverner again asked to make photocopies, and Vincent again refused, even after Taverner proposed to "pa[y] the [Respondent's] secretaries" for their time in making such copies, and even after he further proposed to bring his own copy machine into the hall. Taverner also asked to "writ[e] down word-for-word" what he found in the records Vincent was willing to disclose; he claims that Vincent refused this request, "because that's privileged information that's for the Hiring Hall only." On this latter point, I again think Taverner may have confused or misreported what Vincent said. I find that Vincent only refused to permit Taverner to record the telephone and social security numbers of the registrants.

B. Analyses; Conclusions of Law

1. Controlling principles

As an element of its duty of fair representation, "[a] union has an obligation to deal fairly with an employee's request for job referral information and . . . an employee is entitled to access to job referral lists to determine his relative position to protect his referral rights."²² Therefore, "[a] union breaches its duty of fair representation in violation of Section

²⁰Taverner testified generally that he believed that, with one possible exception, he requested copies of the employer "contact lists" during each of his encounters with Vincent at the hall, described above and below (each time admittedly for the purpose of trying to hustle his own job), and that each time, Vincent refused this request. The "June 1993" visit was one time that Taverner specifically recalled that such an exchange occurred. Because I have found that at least one such exchange occurred after the settlement agreement, during Taverner's June visit, the statutory issue of Taverner's entitlement to such a list is clearly joined, and I therefore find it unnecessary to decide whether Taverner had similar exchanges with Vincent during the other postsettlement visits described above and below.

²¹Tr. 30:2-3.

²²*Teamsters Local 282 (AGC of New York)*, 280 NLRB 733, 735 (1986). See also *Operating Engineers Local 825 (Building Contractors)*, 284 NLRB 188, 189 (1987).

8(b)(1)(A) of the NLRA when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to obtaining job referrals."²³

2. The Respondent's postsettlement behavior

For purposes of analysis, and consistent with the settlement bar doctrine, *supra*, I will deal first with whether or not the Respondent failed to comply with the February 1993 settlement agreement or otherwise committed violations of Section 8(b)(1)(A) in the period after the Regional Director approved it. In the light of my previous findings, this is how I analyze each of the following complained-of elements of the Respondent's postsettlement behavior.

a. Vincent's repeated refusal to give Taverner any access to dispatch records for the period March-September 1992, i.e., the 6-month period preceding his original, presettlement request

The central question is: Was it unlawfully arbitrary for the Respondent, postsettlement, to let Taverner look at records going back more than 6 months from the date he made each postsettlement request? Counsel for the General Counsel does not specifically address this question on brief. I find this curious because, as I have noted, *supra*, the General Counsel and the Respondent seemingly agree that when it comes to hiring hall records, an employee's "look-back" rights under the Act are essentially coterminous with the 6-month statute of limitations on charge-filing mandated by Section 10(b) of the Act. If, indeed, it is legally appropriate to equate an employee's look-back rights with Section 10(b)'s 6-month rule,²⁴ it would seem to follow that it is not unlawfully arbitrary, *per se*, for a union to refuse to yield up more than the last 6 months' worth of its records when confronted by an appropriate request from a hiring hall user. And therefore it would be hard to find *independent* arbitrariness (i.e., arbitrariness not inescapably bound up with the Respondent's presettlement conduct) in the Respondent's taking the position in March 1993 and thereafter that Taverner could only look at records for the 6 months preceding each request.

As I have just suggested parenthetically, if there were "arbitrariness" in the Respondent's 1993 position, it could only be so understood by reference to a judgment that the Respondent's original, presettlement refusals to let Taverner look at records for the 6 months before his original requests for access (i.e., going back to March 1992) were themselves unlawfully arbitrary. But now we get into tail-chasing; for the settlement bar doctrine effectively precludes such a judgment, unless I can find first that the Respondent failed to "comply" with the settlement, either by breaking some specific promise in the settlement agreement, or by committing

²³*NLRB v. Carpenters Local 608*, 811 F.2d 149, 152 (2d Cir. 1987).

²⁴Neither party briefed this question, and I have not independently researched it. However, contrary to the General Counsel's suggestion on brief, I don't think the Board decided the point in *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300 (1992), because the charging party's request was itself limited to the 6-month period preceding the request. *Id.* at fn. 1.

at least one independent, postsettlement violation. As I have reasoned, the conduct now in question does not stand on its own as a violation, i.e., it does not reflect unlawful arbitrariness, per se, assuming the correctness of the General Counsel's position that a union need not honor requests for records going back more than 6 months from the date of the request. Moreover, the conduct now in question involves no plain renegeing on a promise made in the settlement agreement, for nothing in the settlement agreement addresses the question of Taverner's access to information for the period March–September 1992, the only period which the Respondent never allowed him to review.²⁵

Accordingly, in the absence of a coherent statement of the story from the General Counsel, I can find no basis for concluding that it was independently arbitrary for the Respondent in March 1993 or at any time thereafter to have refused to give Taverner access to any dispatch records going back more than 6 months from the date of his respective postsettlement visits to the hall. And therefore such postsettlement behavior cannot be used as a bootstrap to justify an inquiry into the lawfulness of the Respondent's presettlement refusal to let Taverner see records for the period March–September 1992. However, for reasons noted in the next two subsections, I will find that it was independently "arbitrary" for the Respondent, postsettlement, to refuse to let Taverner photocopy even those records that it was willing to disclose to him, i.e., those going back 6 months from his "early March" 1993 and later appearances at the hiring hall, and it was further unlawfully arbitrary for the Respondent to have instructed Taverner not to make any notes that would include registrants' home telephone numbers and social security numbers. And it is on the basis of these independent postsettlement violations that I will eventually reach the question of the legality of the Respondent's presettlement behavior.

b. The Respondent's refusals to let Taverner photocopy the records that it did offer to let Taverner review, i.e., those for the 6 months before each of his postsettlement requests

The Respondent's persistent refusal to let Taverner make photocopies of the records it was willing to show him was, in my view, unlawfully "arbitrary," because it clearly placed a burden on Taverner's ability to gather and digest needed information, and because it was not shown to be necessary to vindicate any legitimate union interests. The information contained in these records properly bearing on how fairly Taverner had been treated when it came to referrals was too varied and complex to be fully digested at any one sitting, but needed to be studied and restudied at leisure, something that photocopying allows. And it was not a reasonable accommodation to Taverner's needs that Vincent allowed Tav-

²⁵ Why this central subject of the complaint in Case 32–CB–3967—the case being settled—was not addressed in the settlement is a question I can't answer on this record. At least one possibility is that the General Counsel, through the Regional Director, and the Respondent had simply "agreed to disagree" about whether or not the Respondent's September 1992 refusal to let Taverner see records for the previous 6 months was unlawfully "arbitrary" behavior, and intended only to ensure that in the future, Taverner would be given a full, 6-month look-back, dating from any future look-back request he might make.

erner to take notes (but not to record telephone or social security numbers) about what he found in these records. Onsite note-taking is a tedious, inefficient, and inherently pressured enterprise, and one which therefore would hamper Taverner's ability to make intelligent judgments about the fairness of his referral treatment.²⁶ Accordingly, where photocopying and more leisured study was a practical and decidedly more effective way for Taverner to assess the fairness of his referral treatment, and where Taverner had offered to pay the costs of copying, or to do the job himself with his own copier, I would presume that the Respondent's refusal to allow photocopying was for arbitrary or other invidious reasons that are incompatible with the Respondent's duty of fair representation,²⁷ unless the Respondent could demonstrate that its ban on photocopying served some legitimate union interest.

The only defense raised to the Respondent's refusals to allow photocopying in this regard is that "confidential" information (specifically limited to registrants' home telephone numbers and social security numbers) would be compromised by allowing copying. But this defense is unpersuasive on several levels: First, I doubt that confidentiality concerns genuinely animated Vincent's flat ban on copying; for if they had, Vincent could have dealt with such concerns by offering some arrangement to black-out the addresses and social security numbers of the registrants on any copy Taverner might have sought to retain. Separately, by allowing Taverner to examine and take notes on the unexpurgated records in private, Vincent must have known that he could not prevent Taverner from recording or memorizing the information Vincent claimed to wish to maintain as "confidential." Thus, we may suppose that Vincent's ban on any photocopying had less to do with confidentiality concerns than with a wish to hamper Taverner's ability (and that of the Board agents with whom Taverner was known to be in rather frequent contact during the history of these cases) to analyze the fairness of Taverner's treatment at the Respondent's hands. In any case, Vincent's subjective intentions aside, the Respondent has not made a sufficient record to establish that the registrants on the list operated under any reasonable "expectation of confidentiality" of their home telephone and social security numbers.²⁸ Indeed, such a showing would be difficult to make in this case, because Vincent did allow Taverner to study records containing these numbers, and Vincent further acknowledged that the lists currently in use at any given time are routinely available for inspection by hiring hall users, and such lists routinely contain those numbers. Finally, even home telephone numbers

²⁶ It hardly needs to be added that Taverner's notes taken under the conditions imposed by Vincent would have decidedly less value as evidence than would photocopies of the records themselves, were Taverner to charge the Respondent with unlawfully bypassing him, either before the Board or in a grievance procedure under the MEA contract. And I assume that Vincent was mindful of this when he allowed only note-taking.

²⁷ In *Carpenters Local 608 (Various Employers)*, 279 NLRB 747 (1986), the administrative law judge, whose decision was adopted by the Board despite pertinent exceptions, appears to have presumed that the right to photocopy is a necessary adjunct to a hiring hall user's right of access to union dispatch records to ascertain the fairness of his or her treatment.

²⁸ *Carpenters Local 608 (Various Employers)*, supra at 759.

and social security numbers may be useful or necessary information for Taverner to make an intelligent investigation into whether or not, for example, a registrant below Taverner on the list dispatched ahead of Taverner was legitimately called “by name,” based on earlier employment with the employer.²⁹

In these circumstances, therefore, I conclude as a matter of law that each time in the postsettlement period when Vincent refused to let Taverner photocopy the records otherwise proffered for Taverner’s review, the Respondent violated Section 8(b)(1)(A) of the Act.

c. The Respondent’s repeated refusal to let Taverner take notes of the telephone numbers and social security numbers of the registrants shown on the records that it allowed Taverner to review

I have already concluded that it was unlawfully arbitrary for the Respondent to have limited Taverner to note-taking; I have further found that home telephone numbers and social security numbers of registrants can be useful or necessary information to a hiring hall user seeking to ascertain the fairness of his or her referral treatment, and that the Respondent has failed to support its confidentiality defense with any showing that the registrants on the list had any reasonable expectation that these numbers would be maintained by the Respondent on a confidential basis. I therefore conclude as a matter of law that when Vincent instructed Taverner not to take notes of the telephone and social security numbers of registrants, the Respondent acted arbitrarily, and thereby violated Section 8(b)(1)(A) of the Act.

d. The Respondent’s refusal during (at least one) postsettlement visit to give Taverner a copy of its “signatory contractor” or “employer contact” list

During the trial, shortly after counsel for the General Counsel announced that the complaint intended to call into question the matter of the Respondent’s refusal to furnish contractor lists to Taverner, counsel for the General Counsel explained her theory of violation in these terms: “he [Taverner] needed them [the lists] to contact them [the contractors, presumably]. To find out who was being dispatched and what was going on.”

In a different case, perhaps, a theory premised on a hiring hall user’s “need,” as thus expressed, might have some appeal; but in this case, where Taverner had already candidly admitted that his real reason for wanting the lists was to hustle his own job, the General Counsel’s first expression of theory (the one she averred had been “deliberately” arrived at by “the Region”) was spoiled by Taverner’s mundane admissions. It was for this reason that, after hearing the above statement from the General Counsel, I observed, “Also, perhaps [Taverner intended] to bat his own jobs.” And it was with all this in mind that I said this to counsel for the General Counsel at the conclusion of the trial:

[A]ssuming I were to credit Mr. Taverner [that Vincent always denied his repeated requests for the “signatory contractors lists”], I’d like the General Counsel’s clearest statement [on brief] of why such disclosure was re-

quired under the law and whether denial would violate Section 8(b)(1)(A).

Counsel for the General Counsel now takes a wholly new tack on brief: She now avers that Taverner’s admission that he wanted to hustle his own jobs is “irrelevant,” and “constitutes [no] defense to Respondent’s refusal to provide [the list].”³⁰ Why? The General Counsel now cites what I deem are less-than-conclusive indications on this record that “job hustling,” although officially prohibited, is a “common” practice among the Respondent’s hiring hall users; and from this shaky base, the General Counsel leaps even further—she now charges the Respondent with not just condonation of this supposed “common” practice, but with running or managing it. (Thus, the General Counsel refers to the “Respondent’s officially prohibited but nevertheless sanctioned ‘shadow’ self-hiring hall.”³¹) And having thus characterized the situation, the General Counsel reasons ultimately that Vincent’s refusal to give Taverner a list to use for hustling purposes “effectively prevented [Taverner] from participating in” the game that everyone else supposedly got to play, and that the Respondent “thus breached its duty to treat Taverner fairly with respect to *that aspect of its hiring hall.*”³²

I found at the outset of this decision that the complaint never gave adequate notice that the Respondent’s failure to furnish contractor lists was being prosecuted. I am even more persuaded that the language in the complaint could not possibly encompass the most recent, and wholly new, expression of the General Counsel’s theory. This judgment affects how I now approach that theory.

The General Counsel’s current theory, apart from being legally exotic, as I discuss later, depends at the threshold on my finding that the Respondent “sanctioned” a “‘shadow’ self-hiring hall.” To make such a finding would require my drawing a series of attenuated inferences adverse to the Respondent from this spare record. I think it would be repugnant to notions of due process to use adverse inferences to make such a finding where I judge that the Respondent never received notice in any form that it was being charged with sanctioning job-hustling in general, while not giving Taverner information that would help him, too, hustle a job. Put simply, that question was not fully litigated; and in my judgment, it was not fully litigated precisely because the Respondent received no notice that it was material to the case. In any case, I find, contrary to the General Counsel, that the record shows no substantial evidence that the Respondent in any way “sanctioned” job-hustling by its members. Rather, the record reasonably shows, at most, that Vincent was *aware* that some members might be hustling their own jobs, and that he felt himself practically helpless to prevent such behavior entirely, but it fails to show that Vincent in any way condoned or sanctioned this practice, much less that he cooperated in it by furnishing employer lists to other hiring hall users *for the purpose* of hustling their own jobs. Thus, the General Counsel’s new theory is not supported by the facts. Moreover, I repeat that if the General Counsel’s overheated references to the “Respondent’s . . . sanctioned ‘shadow’ self-hiring hall” were supported by substantial evi-

³⁰ G.C. Br. at 8.

³¹ Id. at 9; my emphasis.

³² Id. at 8–9; my emphasis.

²⁹ Id. at 758–759.

dence, this entire prosecution would have to be dismissed, because such a phenomenon would negate the “exclusivity” showing required at the threshold to find that the Respondent owed a duty of fair representation toward Taverner.

Finally, counsel for the General Counsel cites no precedent for her most recently expressed theory as to why Federal law is implicated by Vincent’s refusal to give Taverner the contractor lists for job-hustling, and indeed, her current theory cannot be harmonized with the governing legal principles announced at the beginning of these analyses. We must recall that the legal basis for a hiring hall user’s right of access to a union’s dispatching or referral records is “to determine his relative position to protect his referral rights,”³³ or to “ascertain[] whether the member has been fairly treated with respect to obtaining job referrals.”³⁴ Nothing in these authorities or their progeny supports the proposition here advanced by the General Counsel—that our Act creates a duty on a union’s part to give information available in the hiring hall to a jobseeker for purposes unrelated to the fair operation of the hiring and referral system—indeed, for purposes that would undermine the very effectiveness of the hiring hall as an institution designed to provide fair opportunities for employment to *all* hiring hall users. And especially where the record was made long before the General Counsel ever came up with her current theory, and was made without notice of that current theory, I judge that this case would be a quite unattractive vehicle for testing the validity of that theory.

Accordingly, I would dismiss all contentions, whether in the complaint or invented later by the General Counsel, which maintain that the Respondent violated Section 8(b)(1)(A) by refusing to give Taverner copies of the contractor lists.

3. The Respondent’s presettlement behavior

Because I have found that the Respondent committed some, but not all of the postsettlement unfair labor practices it is being charged with, this vitiates the settlement agreement and permits me to examine the legality of its presettlement behavior. In the light of previous findings and discussion, this examination need not be lengthy. Insofar as the Respondent is charged with violating Section 8(b)(1)(A) by refusing to give Taverner copies of the contractor lists in late August and early September 1992, I reject that charge for the same reasons I rejected the same attack on its similar behavior after the settlement. However, insofar as the complaint alleges that the Respondent committed a violation by refusing to let Taverner look at records dating back 6 months from his September requests for such a look, the complaint is clearly meritorious.³⁵

C. Remedy; Order

Having found that the Respondent committed unfair labor practices affecting commerce, I issue the following rec-

³³ *Teamsters Local 282 (AGC of New York)*, 280 NLRB 733, 735 (1986).

³⁴ *Teamsters Local 282 (AGC of New York)*, supra at 735. See also *Operating Engineers Local 825 (Building Contractors)*, 284 NLRB 188, 189 (1987).

³⁵ *Carpenters Local 608 (Various Employers)*, supra.

ommended Order,³⁶ designed to restore to Taverner the rights of access to information that the Respondent arbitrarily denied to him, and to effectuate the purposes of the Act.

ORDER

The Respondent, Millwrights & Machinery Erectors Union Local 102, a/w International Brotherhood of Carpenters and Joiners of America, AFL–CIO, Oakland, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Arbitrarily refusing to allow James Taverner to look at, or take notes about, or photocopy job referral records or other job referral information in its possession which would help Taverner determine his relative referral position or ascertain whether he is being or has been treated fairly when it comes to job referrals.

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

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

(a) Let Taverner look at, and if he wants to, to take notes about or photocopy, all job referral records or other job referral information in its possession for the period March 1992 to the date the Respondent shall have fully complied with this Order which would help Taverner determine his relative referral position or ascertain whether he is being or has been treated fairly when it comes to job referrals.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all records matching the foregoing descriptions.

(c) Post at its offices or hiring halls, wherever they may be maintained, copies of the attached notice marked “Appendix.”³⁷ Copies of the notice, on forms provided by the Regional Director for Region 32, 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 and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

³⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³⁷ 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.”

APPENDIX

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

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

WE WILL NOT arbitrarily refuse to allow James Taverner to look at, or take notes about, or photocopy job referral records or other job referral information in our possession which would help Taverner determine his relative referral position or ascertain whether he is being or has been treated fairly when it comes to job referrals.

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

WE WILL let Taverner look at, and if he wants to, to take notes about or photocopy, all job referral records or other job referral information in our possession for the period March 1992 to the date we shall have fully complied with the Board's Order which would help Taverner determine his relative referral position or ascertain whether he is being or has been treated fairly when it comes to job referrals.

MILLWRIGHTS & MACHINERY ERECTORS
UNION LOCAL 102, A/W UNITED BROTHER-
HOOD OF CARPENTERS AND JOINERS OF
AMERICA, AFL-CIO