

**Carpenters Local Union No. 35, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Construction Employers Association of California) and John Blanton.** Case 20-CB-9313

April 26, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

On November 22, 1994, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering 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,<sup>1</sup> and conclusions and to adopt the recommended Order.

1. Prior to the conclusion of the General Counsel's case in chief, the General Counsel moved to amend the complaint to allege that the Respondent unlawfully refused to permit Charging Party John Blanton to make copies of the requested hiring hall information. The judge granted the motion on the grounds that the Region's notification to the Respondent of the determination to issue complaint and the General Counsel's opening statement made clear that the refusal to make copies was at issue, and that the Respondent was not surprised or prejudiced by the amendment. The Respondent excepts to the judge's ruling on the ground that it was prejudiced by the change in the General Counsel's legal theory. We disagree.

In addition to the judge's reasoning, we observe that the amendment was closely related to the timely filed charge in that they both arose from the same factual circumstances, involved the same legal theory and defenses, and alleged a violation of the same section of

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

Member Browning agrees with the judge's finding that Charging Party Blanton, a member of the Respondent, reasonably believed that he had been discriminatorily denied referrals from the Respondent's exclusive hiring hall. Accordingly, she agrees that Blanton has a right to copies of the requested hiring hall information. See *Carpenters Local 608 (Various Employers)*, 279 NLRB 747, 757 (1986), enfd. 811 F.2d 149, 152 (2d Cir. 1987). She does not rely on the judge's citation to *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1303 (1992), which suggests "that it is enough to establish a right to hiring hall information that the applicant [in good faith] simply wishes to see it."

the Act. The Respondent's refusal to permit copying was fully litigated at the hearing, both in the Respondent's cross-examination of the General Counsel's witnesses and in the Respondent's presentation of evidence. Thus, the Respondent has failed to show that it was prejudiced by the judge's granting of the General Counsel's motion to amend the complaint. See *Children's Mercy Hospital*, 311 NLRB 204 fn. 2 (1993).

2. The Respondent has also excepted to the judge's denial of its request to recuse Region 20 from handling this proceeding. We find the judge's ruling proper.

The Respondent contends that Supervisory Attorney Ralph Muller is both the brother-in-law of General Counsel witness Endriulaitis and the supervisor to counsel for the General Counsel Mary Vail. The record shows that Muller did not participate in the investigation of the case or in the Region's decision to issue complaint. When it appeared that Endriulaitis might be used as a General Counsel witness, Muller immediately recused himself from supervising Vail and from further participation in the case. Accordingly, we find that there was no impropriety on the part of the Region and deny the Respondent's request to have the Region recused from this matter.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Carpenters Local Union No. 35, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, San Rafael, California, its officers, agents, and representatives, shall take the action set forth in the Order.

*Mary Vail, Esq.*, for the General Counsel.

*Paul D. Supton (Van Bourg, Weinberg, Roger & Rosenfeld)*,  
of San Francisco, California, for the Respondent.

*John Blanton*, of San Rafael, California, appearing pro se.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in San Francisco, California, on March 22, 1994. On July 1, 1993,<sup>1</sup> the Acting Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based on an unfair labor practice charge filed May 20, alleging violations of Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs.<sup>2</sup> Based on the entire record, on the briefs that were filed, and on my observation of the demeanor of the witnesses, I enter the following

<sup>1</sup> Unless stated otherwise, all dates occurred in 1993.

<sup>2</sup> The motion to strike portions of Respondent's brief is denied.

## FINDINGS OF FACT

## I. JURISDICTION

At all material times Construction Employers Association of California (the Association) has been an organization composed of various employers engaged in the construction and building trades. One purpose of the Association is to represent its employer-members in negotiating and administering collective-bargaining contracts with various labor organizations. At all material times employer-members of the Association have authorized it to represent them in negotiating and administering collective-bargaining contracts with various labor organizations, including Carpenters 46 Northern California Counties Conference Board, United Brotherhood of Carpenters and Joiners of America (AFL-CIO) (California Conference Board), an unincorporated organization comprised of constituent local unions which it represents, as one purpose of its existence, in dealing with employers concerning terms and conditions of employment for employees who are members of or represented by those constituent local unions.

In the course and conduct of the above-described business operations during calendar year 1992, employer-members of the Association collectively purchased and received at their California facilities directly from points outside of California goods valued in excess of \$50,000. Therefore, I conclude, as admitted in the answer of Carpenters Local Union No. 35 to the complaint, that at all material times employer-members of the Association collectively have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

At all material times Carpenters Local Union No. 35, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Respondent) has been a labor organization within the meaning of Section 2(5) of the Act and, further, has been one of the constituent local union members of California Conference Board.

## III. ALLEGED UNFAIR LABOR PRACTICES

During 1988 the Association and California Conference Board, on behalf of their respective members, entered into a collective-bargaining contract, effective from April 1, 1988, through June 15, 1993. Section 49 of that contract sets forth, as the complaint alleges and answer admits, "an exclusive hiring provision . . . requiring, inter alia, that Respondent operate a hiring hall and be the sole and exclusive source of referrals of employees to employment with the employer-members of the Association for work when the work [is within the] geographic jurisdiction of Respondent."

The Charging Party, John Blanton, has been a carpenter since 1979 and a member of Respondent since 1985. He testified that he had been out of work in April and had been registered on the out-of-work list maintained in the hiring hall operated by Respondent, pursuant to section 49 of the above-described contract, "[a]s of the spring of 1993[.]" By letter dated May 4, Blanton and six other "members of [Respondent] and registered on the 'Out of Work List' . . . or . . . forced, by lack of work coming out of [Respondent's] hiring hall, to seek registration on another Local 'Out of

Work List,' respectfully request the following documents[.]" Requested in the letter was enumerated information "pertaining to the functioning of [Respondent's] hiring hall[.]" There is no need to further describe information in that category which the letter requested, since there is no contention that the information encompassed by that aspect of the May 4 letter had been withheld from the letter signers. Instead, the complaint focuses on the information sought in the succeeding portion of their letter.

The letter continues by asserting, inter alia, "I have good faith and reason to believe I have been, and am being discriminated against by [Respondent] in job referrals," and,

to determine whether I have been or am being discriminated against, I seek information concerning the identity of persons on the [Respondent's] job referral list(s), and of the persons who have been referred to jobs, as well as dates the said persons who have been referred to jobs, as well as the dates of referral, dates of hire, and date of last preceding discharge.

Please forward to me by "Return Mail" the names, addresses and telephone numbers or [sic] all persons who, during the past six months, have asked to be referred to jobs by [Respondent], or have asked that their names be placed on a list for job referral, together with:

(A) The date or dates of each request.

(B) The date or dates of each subsequent referral of such person to a job, including the name of person so referred, the name of the employer to whom referred, and identification of the job site to which referred.

(C) The date or dates of each hire and of any subsequent layoff or discharge, including the name of the person hired and/or laid off, the name of the employer, and the identification of the job site.

I shall, of course, be prepared to pay a reasonable cost for reproducing the information requested.

We respectfully request, as trade unionists, that copies of all these documents be mailed to each of us individually at the address listed below next to our name, and that requested information be mailed no later than May 27, 1993.

It is undisputed that Respondent received the letter.

Nor is it undisputed that shortly afterward Blanton participated in a conversation with Paul M. Cohen, then president of Respondent and, for purposes of this proceeding only, an admitted agent of Respondent within the meaning of Section 2(13) of the Act. During that conversation, which was placed on May 10, the complaint alleges that Respondent violated Section 8(b)(1)(A) of the Act because Cohen allegedly "told Blanton he would not be furnished the information because he had concertedly with fellow employee/members filed a grievance and lawsuit against Respondent."

As to that allegation, Blanton testified that Cohen had said, "You guys who signed this aren't going to get this information. There's two guys here, John and Robin, who sued the union for 8,000 bucks, and all you want this information for is to sue the union."<sup>3</sup> Cohen testified that he had partici-

<sup>3</sup>Blanton, himself, had never previously sued Respondent, although he then had a civil suit pending against its former financial secretary and senior business agent.

pated in more than one May conversation with Blanton. In one of them, testified Cohen, he had said, “we were not going to respond to their request. They could come in and examine the documents.” When Blanton said, “so you’re not going to respond to our request,” according to Cohen, he had replied, in essence, “I’m not going to give you this, so that you can go on a fishing expedition.”

Yet, as his testimony regarding this conversation progressed further, Cohen’s account began to correspond more and more closely to the above-quoted one by Blanton. Asked if he had said “anything to the effect that you weren’t going to give him the records because he had filed grievances or because he had sued the union, or words to that effect,” Cohen answered equivocally, “I don’t believe so.” Asked next if anything further had been said during that conversation, Cohen acknowledged, “I believe I may have said something about previous lawsuits.” Questioned further, Cohen conceded ultimately:

I said that I wasn’t—I repeated—I mean, essentially the same thing I had said when I said I’m not going to let him go on a fishing expedition. I’m not going to let him look for an excuse—I’m not going to give him this to look for an excuse to file more lawsuits against the local.

Eventually Cohen responded to the May 4 letter with identically worded letters of his own, sent to each of the May 4 letter signers. That letter, dated June 1, states, in pertinent part:

This is in response to your request for information submitted to me by letter dated May 4, 1993.

Persons who utilize [Respondent’s] hiring hall for the purposes of seeking employment are entitled to review the out-of-work list and the dispatch records for a period of six months preceding the request. You are not entitled to copies of any of the documents, but you are free to make notes from any of the documents you review. No material may be removed from the premises of [Respondent]. If you wish to take advantage of this and review these documents, please call and make an appointment so that we can be sure a business representative will be available.

In addition, Respondent has taken the firm position, throughout the period encompassed by this proceeding, that addresses and telephone numbers of hiring hall registrants are confidential and will not be revealed.

With regard to the absolute refusal to disclose addresses and telephone numbers, the General Counsel alleges and argues that it constitutes an unlawful refusal to provide information, in violation of Section 8(b)(1)(A) of the Act. As to the above-quoted portion of Cohen’s June 1 letter, the General Counsel argues that Respondent’s refusal to furnish copies of documents enumerating hiring hall registrations for dispatch and referrals also violates Section 8(b)(1)(A) of the Act. That latter argument however had bred a procedural, as well as a substantive, dispute.

Subparagraph 7(c) of the complaint described Respondent’s allegedly unlawful conduct, in connection with the information request, in these terms: “had failed and refused to furnish Blanton with the information.” As to addresses and

telephone numbers, that is surely a complete description. As to the hiring hall records of registrations and referrals, that allegation however makes no mention of a failure to furnish copies. Yet, the General Counsel’s brief make plain that a refusal to make or allow copies is the only unlawful conduct being alleged with regard to that aspect of this case: because Respondent “refused to allow Blanton to make copies of certain hiring hall dispatch records.”

Before resting at the conclusion of her case-in-chief, counsel for the General Counsel moved to amend subparagraph 7(c) of the complaint—“largely for clarity purposes,” she represented—to add, “and refused to permit Blanton to make copies of same information.” Respondent’s counsel opposed the motion, arguing that, “It’s a change in the theory, and it comes at a time when I’ve put on a major portion of my case, both in argument and in examining adverse witnesses,” although he allowed that, “I know you’re going to grant it, because it’s routinely granted.” In fact, I did so. In his brief, Respondent’s counsel however requests that I revisit that ruling and reverse it on the ground that the motion to amend had been too belated, being made “only after General Counsel ha[d] finished eliciting evidence and after cross-examination ha[d] concluded.”

I decline to reverse my ruling. As counsel acknowledged, a motion to amend a complaint made during a hearing is not an extraordinary event. Section 102.17 of the Board’s Rules and Regulations specifically allows such motions to be made even “after the case has been transferred to the Board,” following issuance of administrative law judges’ decisions. Certainly Section 102.17 does qualify ability to amend complaints by requiring that such motions be granted “upon such terms as may be deemed just,” and in different circumstances Respondent might be able to prevail on the basis of that qualification. Here a review of the record however discloses that an allegation predicated on refusal to allow copying had not been so surprising as Respondent seeks to portray.

In the third sentence of her opening statement, made before any witness had been called, counsel for the General Counsel stated expressly that, “The pertinent part of the information request is the request for six months of dispatch records and the opportunity to go to the hall, photocopy them, and tender to the union photocopying costs associated with reproduction of the six months of dispatch records.” This had not been the first notice to Respondent that copying was a central aspect of the instant case. In a letter dated June 22 to one of Respondent’s counsel (R. Exh. 10), the Regional Office gave notice that, as a result of an agenda, “It was determined that the Region will issue complaint on July 2, 1993 on the Union’s refusal to allow the Charging Party and others to make photocopies of the requested written information upon payment of reasonable costs.” Indeed, in a reply letter dated June 28 (R. Exh. 9), counsel replied: “The records you are talking about do contain personal information which is confidential and privileged. For that reason it may not be copied without the consent of the members whose information is in question.”

Obviously, the complaint’s description of the alleged unlawful conduct might have been pled with greater care. Yet, “it is settled law that particularity of pleading is not required of a complaint issued by the Board.” (Citations omitted.) *Bob’s Casing Crews, Inc. v. NLRB*, 458 F.2d 1301, 1304—

1305 (5th Cir. 1972). Here, as in that case, “even assuming arguendo that the complaint was not sufficiently detailed to put [Respondent] on notice . . . as to the precise facts at issue,” the Regional Office’s June 22 letter and the above-quoted portion of the General Counsel’s opening statement identified specifically that refusal to allow copying is at issue in the instant case. Moreover, short of argumentative generalities, Respondent’s argument in opposition to the amendment makes no particularized showing of prejudice to it as a result of granting the amendment, so that the complaint now more precisely alleges that which has been known to Respondent for many months before the hearing opened. Therefore, no injustice resulted from granting the motion to amend the complaint and I deny, in effect, the motion to reconsider and reverse my ruling granting that motion.<sup>4</sup>

#### IV. DISCUSSION

As quoted in section III, supra, save for registrants’ addresses and telephone numbers, in his June 1 letter Cohen offered Blanton and the other May 4 letter signers an opportunity “to review the out-of-work list and the dispatch records for a period of six months preceding [their] request.” Consequently, as to those records there is no basis for concluding that there had been an unlawful refusal to allow inspection; the only issue involving them is an alleged unlawful refusal to furnish mechanically reproduced copies of them or to allow one or more of the letter signers to make such copies.<sup>5</sup>

Respondent concedes that the Board has found a violation of Section 8(b)(1)(A) of the Act where a labor organization refused, inter alia, to duplicate or permit duplication of hiring hall records in response to a request, with respect to hiring hall registrants and referrals, worded identically to that recited in the May 4 letter. *Carpenters Local 608 (Various Employers)*, 279 NLRB 747 (1986), enf. 811 F.2d 149 (2d Cir. 1987), cert. denied 484 U.S. 817 (1987). Indeed, with regard to that portion of it, the May 4 letter had been prepared by copying the request transmitted to Carpenters Local 608 in that case. Thus, in preparing their request, the May 4 letter signers relied on the precedent of *Carpenters Local 608* in

<sup>4</sup>Nor am I authorized, in the circumstances presented here, to make any finding regarding the asserted impropriety of the Regional Office’s handling of this case in light of the fact that one of the May 4 letter signers, Walter Endriulaitis, is a brother-in-law of a supervising attorney in Region 20. Endriulaitis may or may not have boasted to other employees about the relationship, in an effort to enhance his own stature with them. But there is no showing of prosecutorial misconduct by the supervising attorney, nor by other Regional personnel, that can be said to adversely affect Respondent in the investigation and prosecution of the very narrow, and largely admitted, facts underlying the allegations at issue. As a general proposition it may be that Regional handling of such situations should be subject to greater restrictions and to a requirement that charged parties be given notice of familial relationships in particular cases. I have no authority however to dictate to the General Counsel how to process investigations, so long as there is no resulting misconduct or interference with a respondent’s right to a fair hearing. As stated, there is no basis for concluding that one or the other of those situations occurred here.

<sup>5</sup>Obviously, there are differences between those two courses. But in the circumstances presented in the instant case, there is no distinction between them for purposes of evaluating whether or not Respondent violated the Act.

requesting that they be furnished copies of Respondent’s hiring records, in return for payment of “a reasonable cost for reproducing the information requested.”

Nevertheless, Respondent argues that, as to furnishing copies, or allowing duplication, Local 608 should not be regarded as precedential because, in that case, “the Administrative Law Judge presumed a right to copy was encompassed in the right to inspect. The Board silently adopted his opinion.” At first blush that argument might appear to be an accurate one. An examination of the Board’s remedial modification in that case however refutes any argument that the Board did not evaluate the “right to copy” aspect of the judge’s decision and, instead, merely rubber-stamped what he had written.

In paragraphs 1(a) and (b) and 2(a) of his recommended Order the administrative law judge specified only inspecting and reviewing hiring hall records. In its Order the Board modified each of those paragraphs by inserting “photocopy, or duplicate,” adding also “(on payment of reasonable costs)” in each instance. As a result, there is no basis for concluding that, in *Carpenters Local 608*, the Board merely “adopted” the judge’s right-to-copy conclusion, without independently considering that aspect of that case. To the contrary, by the Order’s modifications the Board demonstrated its consideration of that issue in most telling form.

Furthermore, the Board agreed with a like conclusion, that a respondent labor organization had violated Section 8(b)(1)(A) of the Act by refusing to allow requested “copies of dispatches for a specified 6-month period,” in the subsequent case of *Service Employees Local 9 (Blumenfeld Enterprises)*, 290 NLRB 1, 4 (1988) (quotation from conclusions of law section). Consequently, there is no basis for concluding that doubt exists as to whether or not the Board truly has evaluated and resolved the issue of refusals to furnish copies of hiring hall records to employees, or to allow employees to make those copies, under Section 8(b)(1)(A) of the Act.

Yet, implicit in Respondent’s above-quoted argument is the subsidiary argument that the Board has never bothered to explain specifically how copying, or allowing duplicating, fits into the overall statutory scheme of hiring hall regulation and, concomitantly, to explain why failure to do it, or to permit it to be done, violates Section 8(b)(1)(A) of the Act. To that extent Respondent voices an accurate argument, but not one fatal to the General Counsel’s allegation here that “refusal to allow Blanton to make copies” violates Section 8(b)(1)(A) of the Act.

In the analogous area of employer obligation to furnish relevant information requested by employees’ bargaining agents,<sup>6</sup> the Board has concluded that “sound policy dictates that required documentary information should be furnished by photocopy.” *American Telephone & Telegraph Co.*, 250 NLRB 47, 47 (1980). In reaching that result, the Board relied on the “almost universal practice of most businesses of using photocopying equipment in copying documents.” *Id.* In enforcing the Board’s photocopying conclusion, the circuit court also relied on the “now nearly universal use of photocopies in business affairs,” *Communications Workers Local 1051 v. NLRB*, 644 F.2d 923, 929 (1st Cir. 1981), in conjunction with the Supreme Court’s admonition that “respon-

<sup>6</sup>It is to that very area which Respondent has looked in making some arguments advanced in its brief.

sibility to adapt the Act to changing patterns of industrial life is entrusted to the Board.” *NLRB v. Weingarten, Inc.*, 420 U.S. 251, 266 (1975). In evaluating the duty to furnish requested information, those underlying observations by the Board and by the circuit court are no less applicable to labor organizations than to employers.

Not surprisingly, given the proscriptions of those separate subdivisions of Section 8 of the Act, there is a distinction between policies underlying the obligation to allow employee inspection of hiring hall records and those underlying employers’ obligation to furnish relevant information to bargaining agents. The latter is rooted in the objective of promoting the collective-bargaining process and, in consequence, there is an obligation to exercise “‘diligence and promptness’ in bargaining matters.” *American Telephone & Telegraph*, supra. By contrast, labor organizations operating exclusive hiring halls, such as Respondent, have an obligation to do so in a manner that is neither discriminatory, nor unreasonable, arbitrary, and invidious. See discussion *Painters Local 1140 (Harmon Contract)*, 292 NLRB 723, 733 (1989), and cases cited there. In consequence, “‘inherent in a union’s duty of fair representation is an obligation to deal fairly with an employee’s request for information as to his relative position on the out-of-work register for purposes of job referral through an exclusive hiring hall.”’ *Operating Engineers Local 324 (Michigan Chapter AGC)*, 226 NLRB 587, 587 (1976).

Yet, the distinction in those underlying policies, and in the dimensions of obligations arising from each of them, does not give rise to a difference in the need to furnish reproductions, or to allow copies to be made, in the two situations. The Board is under no lesser duty to adapt the Act to changing patterns of industrial life under Section 8(b)(1)(A) of the Act than under Section 8(a)(5) of the Act. Subject to qualifications discussed below, the universality of document reproduction ordinarily is no less true of common practice by labor organizations than by employers. Moreover, the inherent benefit of reviewing photocopied or otherwise mechanically reproduced documents is one no less naturally enjoyed by employees, examining copies of hiring hall records, than is enjoyed by labor organizations, examining bargaining-related information supplied by employers.

In short, the obligation of fair dealing imposed under Section 8(b)(1)(A) of the Act is served no less by “‘diligence and promptness” in furnishing copies of hiring hall records than is served by obliging employers to furnish copies of bargaining-related information to their employees’ bargaining agents under Section 8(a)(5) of the Act. Therefore, there is a sound policy basis for obliging labor organizations to furnish duplicates of hiring hall records on request by registrants prepared to pay the cost of doing so, as was concluded in *Carpenters Local 608* and in *Service Employees Local 9*.

In *American Telephone & Telegraph*, supra, the Board identified two limitations to its basic rule of requiring photocopies to be furnished: lack of photocopying equipment and, second, undue inconvenience. As to the first one, Respondent has not claimed that it lacks photocopying equipment. Moreover, much of the registration and referral information sought by the May 4 letter has been loaded onto a personal computer. Printouts of at least some such information are periodically posted in the hiring hall and those, or other, printouts are inserted into binders maintained as records of Respondent’s hiring hall operations.

At no point has Respondent contended that, by one means or another, it could not have reproduced or duplicated, through equipment available to it, copies of the records showing the information specified in the May 4 letter.

Nor did Respondent adduce evidence that could support a conclusion of undue inconvenience if obliged to make those copies, or allow them to be made. Obviously, one source of inconvenience could arise from time taken and effort expended by Respondent’s personnel to make the requested copies. When testifying, Cohen however made no assertions that could support a conclusion that time and effort by Respondent’s personnel, to make duplicates, rises to a level of undue inconvenience. Nor did he advance such an assertion in his June 1 letter. Instead, there he simply asserted that the May 4 letter signers “‘are not entitled to copies of any of the documents,”’ without providing any statutorily acceptable reason. Moreover, there is no contention, nor evidence to support one had it been advanced, that Respondent would have suffered any inconvenience by, as an alternative, permitting the letter signers to use Respondent’s duplicating equipment to make copies of those hiring hall records.

Another source of undue inconvenience might be the cost of making copies. Yet, neither was cost asserted by Respondent as a reason for not furnishing copies or for not allowing the May 4 letter signers to make them. Inasmuch as the May 4 letter specifically offers “‘to pay a reasonable cost for reproducing the information requested,”’ it would be somewhat difficult to now rely on cost as the basis for concluding that undue inconvenience had been created by the copying request made in it.

In its brief, Respondent does protest that compliance with the May 4 letter’s request for copies would have obliged it to prepare seven sets of hiring hall registration and dispatch records, one for each of that letter’s signers. That is an accurate assertion, but it is somewhat late in the day to advance it. The letter signers had offered to pay for reasonable reproduction costs. Cohen made no mention whatsoever in his June 1 letter of any burden, based on cost or on any other factor, created by making multiple copies of the records. Given the reproduction and collating capacity of modern duplicating machines and of the ability of computers to print out multiple copies, there is no basis for finding merit in a belatedly asserted protest about the number of sets of copies sought by the May 4 letter.

It is accurate that Respondent offered note taking as an alternative to furnishing copies of its hiring hall records. To support the adequacy of that proposed alternative, it cites *Roadway Express*, 275 NLRB 1107 (1985). But that case involved a request for “‘a single-page letter which could be easily read and understood in a matter of minutes.”’ That was the reason that the Board distinguished the photocopy requirement of *American Telephone & Telegraph*, supra, from the situation presented in *Roadway Express*. By contrast, as Respondent concedes, many more than merely a single document is encompassed by the May 4 letter’s request. Accordingly, the holding of *Roadway Express*—and of *Abercrombie & Fitch Co.*, 206 NLRB 464 (1973), involving a request for copies of 3-1/2 pages of “‘uncomplicated records”’—is not pertinent to the situation presented by the request for copies of hiring hall records for a 6-month period.

Beyond that, as an objective matter, note taking is not inherently an adequate substitute for mechanical reproduction nor for computer printouts of those records. “In no reasonably foreseeable set of circumstances could it be said that handcopying is superior to photocopying in terms of efficiency and reliability of duplication.” *Communications Workers Local 1051 v. NLRB*, supra, 644 F.2d at 929. In fact, Respondent has made no showing that note taking—which is, after all, a form of handcopying, a synonym expressly used to describe it in Respondent’s brief (subsec. H on p. 24)—would be more efficient or would yield a more accurate product than mechanical reproduction of its hiring hall records.

It should not pass unnoticed that a complete and accurate evaluation of hiring hall operations during a 6-month period requires review and comparison of a number of documents. Anyone attempting to conduct it will have to cross-reference and, probably, re-cross-reference a number of documents to reach accurate and reliable conclusions concerning the propriety of each dispatch or referral during that period. In no sense can it be said that such an examination at Respondent’s hiring hall, even with note taking allowed, “is superior to [doing so from mechanically reproduced copies] in terms of efficiency and reliability[.]” Id.

Furthermore, the proposed note taking alternative inherently obliges the May 4 letter signers to conduct their evaluation under the watchful eyes of Respondent’s officials, who may or may not become eventual objects of alleged dispatching improprieties. That concern is not an abstract one in the circumstances presented by the instant case. As described in section III, supra, on first receiving the May 4 letter, Cohen concededly had warned that he was “not going to let [Blanton] go on a fishing expedition” by “giv[ing] him this to look for an excuse to file more lawsuits against” Respondent. Of course, an unfair labor practice charge is naturally encompassed by the term “lawsuit.” And it is one means by which employees can secure relief from hiring halls being operated in a discriminatory fashion or in a manner that is unreasonable, arbitrary, or invidious. Therefore, telling an employee that he/she may not have access to hiring hall records because what they disclose may lead that employee to file lawsuits naturally tends to restrain or coerce that employee’s ability to engage in activity protected by the Act. It thereby violates Section 8(b)(1)(A) of the Act.

It should also be pointed out that the note taking alternative hardly represents less of a burden even for Respondent, itself, than does mechanical reproduction. For the court’s disposal of that type of suggested alternative in the context of an alleged violation of Section 8(a)(5) of the Act is aptly applied to Respondent’s note taking proposal; “Common sense suggests that the burden of permitting photocopying will never exceed that of overseeing union [here, employee] scribes.” *Communications Workers Local 1051 v. NLRB*, supra.

In addition to the foregoing defenses directed to the general obligation to provide duplicates, Respondent advances certain additional defenses tailored to the facts of this particular case. First, it contends that the information sought by the May 4 letter had not been adequately described or identified. But at no point in his June 1 letter did Cohen assert that he did not understand which documents the May 4 letter signers were asking to have copied. Nor, though he spoke

with each one of them about their request, is there evidence that Cohen ever verbally expressed any lack of understanding as to which documents they sought to inspect and have copied. To the contrary, the letter signers were invited to inspect the identified documents in Respondent’s hall and to take whatever notes they desired. That invitation is hardly consistent with a contention, now advanced for the first time, that Respondent had been unable to understand what information was being sought.

To be sure, by its terms, that portion of the May 4 letter describing documents to be copied and produced is not wholly unambiguous. Nevertheless, the Board has upheld the sufficiency of identically worded requests in *Carpenters Local 608*, supra, and in *Service Employees Local 9*, supra. Furthermore, even had Respondent truly not understood all aspects of that request, it had every opportunity to elicit clarification during the period after receipt of the May 4 letter. It simply cannot lie silently in the weeds awaiting a hearing on its refusal to provide information and, then, suddenly spring out protesting the clarity of the request’s wording.

Second, Respondent accuses Blanton of bad faith in having made the request. Yet, as set forth in section III, supra, as of May 4 Blanton had been registered for dispatch from Respondent’s hiring hall. He testified, without contradiction, that he had been out of work. He had been led to believe that there was an upcoming project—construction of a jail in San Rafael, California—on which would be working contractors and subcontractors employing personnel dispatched from Respondent’s hiring hall. Whether that information was or was not truly accurate, it afforded Blanton with a basis for believing that dispatches to that project would be forthcoming from Respondent’s hiring hall. That belief, which there is no basis for concluding that Blanton had formulated in other than good faith, gave rise to a natural interest “as to relative position on the out-of-work register for purposes of job referral through an exclusive hiring hall.” *Operating Engineers Local 324*, supra.

Even if Blanton’s concern had not been tied to dispatch to a particular job, his request, and those of other May 4 letter signers, would not thereby be invalidated for lack of “reasonable belief” that he had been discriminated against in dispatching which had occurred. Furthermore, the Board relatively recently agreed with the conclusion “that it is enough to establish a right to hiring hall information that the applicant simply wishes to see it.” *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1303 (1992). As that decision goes on to point out, that wish to inspect is a consideration wholly separate from the issue of good faith.

Respondent’s bad-faith accusation appears aimed primarily at the letter signers’ failure to accept Cohen’s offer to inspect the requested records at Respondent’s hiring hall and, there, to take notes and, second, at Blanton’s later request for the same records, but for a 3-year period, when he had not even inspected the records already made available to him under the terms of Cohen’s June 1 letter. No allegation however has been made on the basis of Blanton’s subsequent 3-year information request. Accordingly, that is a matter wholly collateral to the issue arising from the request made on May 4.

As to the letter signers’ failure to respond to Cohen’s June 1 offer, as concluded above, that offer did not provide the information in the form requested and to which the letter

signers were entitled. To the contrary, it denied the request for copies. Consequently, those employees could not be obliged to accept less than that to which they were entitled under the Act. And their unwillingness to do so hardly evidences a lack of good faith. In fact, given Cohen's then recent pronouncement about not allowing inspection of hiring hall records as a means for filing a lawsuit against Respondent—never retracted, so far as the record discloses—there is no basis for attributing bad faith to Blanton for not trying to inspect registration and dispatch records in the hiring hall under the watchful eyes of Cohen and other officials and employees of Respondent.

Third, Respondent contends that it had no custody of some requested records. Yet, at no point did Cohen, or any other official of Respondent, make such a statement to Blanton or to the other letter signers. To the contrary, that contention appears to be contradicted by Cohen's June 1 offer to allow the letter signers to inspect the records requested in their May 4 letter to Respondent. In any event, Respondent is not obliged to produce that which it does not possess. It however is obliged to say so when it receives a request for records over which it has no control.

Fourth, Respondent contends that some records were not in the form requested by the May 4 letter. Again, that contention tends to be contradicted by Respondent's failure to tell that to the letter signers, on receipt of their request, and, moreover, by its invitation to inspect at the hiring hall the seemingly very records which it now contends that it does not possess in the form requested. Again, Respondent is no more obliged to re-format records than it is to create records which it does not possess. But it is obliged to level with employees making a proper request for information.

Therefore, I conclude that by refusing to furnish copies or duplicates of hiring hall records requested by the May 4 letter, Respondent violated Section 8(b)(1)(A) of the Act. Furthermore, I conclude that it violated Section 8(b)(1)(A) of the Act by refusing, altogether, to provide addresses and telephone numbers of registrants on its out-of-work list.

In *Operating Engineers Local 324*, supra, the Board concluded that the respondent labor organization had violated Section 8(b)(1)(A) of the Act by refusing to disclose, inter alia, addresses and telephone numbers of hiring hall registrants. Further, addresses and telephone numbers of registrants were among the information encompassed in *Carpenters Local 608*, supra. With specific regard to disclosure of addresses and telephone numbers, the circuit court pointed out that "dissidents will need this information to verify the accuracy of hiring hall records" in *NLRB v. Carpenters Local 608*, supra, 811 F.2d at 154.

To be sure, the court added that the Board could have considered alternatives for providing that same information. But it did not direct the Board to do so. And the Board has not subsequently reversed its position that addresses and telephone numbers of hiring hall registrants must be disclosed, on receipt of a proper request for them, though it has been presented with the opportunity to do so, had that been its disposition. *Operating Engineers Local 513 (Various Employers)*, supra. This case would appear to be an inopportune occasion for doing so, in light of Cohen's unretracted warning that he did not intend to allow Blanton to go on a fishing expedition through Respondent's records "to look for an excuse to file more lawsuits against" it.

I pointed out above that there is no obligation to create records which a labor organization does not ordinarily maintain. Moreover, there may be some situations where it would be an undue inconvenience to present information. Respondent has presented no evidence however that either of those situations existed and presented a problem for providing addresses and telephone numbers of persons referred from its hiring hall during the 6-month period prior to May 4. Consequently, these are not considerations that need be further addressed in the context of the instant case.

Respondent does contend that addresses and telephone numbers are barred from disclosure by its International body's constitution and laws (R. Exh. 6, p. 63). Yet, as pointed out above, production of such information is needed "to verify the accuracy of hiring hall records," *NLRB v. Carpenters Local 608*, supra, and, accordingly, their disclosure is a necessary incident of Respondent's overall statutory duty to deal fairly with requests for hiring hall information by employees, to ensure that hiring hall operations are not being conducted discriminatorily, nor in an unreasonable, arbitrary, and invidious manner. That statutory policy and the duty arising from it may not be frustrated by application to particularized information requests of confidentiality assertions based on general and broadly worded internal policies of labor organizations.

Obviously, there may be situations where abuse might likely follow from disclosure of addresses and telephone numbers in certain circumstances. But those circumstances can be considered whenever they arise. Here, there is no contention of possible abuse of disclosed addresses and telephone numbers by any of the May 4 letter signers. More importantly, there is no evidence of even a likelihood of such abuse by any of them. In these circumstances, labor organizations are not at liberty to invoke general internal constitutional or other proscriptions to create a confidentiality bar that would inherently frustrate enforcement of their statutory duty to deal fairly with employees in the operation of exclusive hiring halls.

Even less persuasive is the confidentiality defense raised on the basis of a policy adopted by Respondent in response to members' objections to posting of dispatching records in the hiring hall. In the first place, that policy was not formulated until December, over 6 months after the letter signers' request, and, thus, could not have influenced Cohen's June 1 response to it. Second, that policy extended only to posting in a public location and there is no basis for concluding that any of the May 4 letter signers intended to publicly post copies of records provided to him. Finally, notwithstanding that policy, the records are maintained in binders accessible to whoever desires to examine their contents. As a result, examination of those records has never been barred absolutely and, consequently, it cannot be maintained persuasively that those records are confidential.

#### CONCLUSIONS OF LAW

Carpenters Local Union No. 35, United Brotherhood of Carpenters and Joiners of America, AFL-CIO has violated Section 8(b)(1)(A) of the Act, and thereby has committed unfair labor practices affecting commerce, by refusing to disclose to employees registered for dispatch from its exclusive hiring hall the addresses and telephone numbers of persons registered and referred to jobs from that hall during the 6-

month period preceding a request for that information, by arbitrarily denying those employees copies or duplicates of hiring hall records for a 6-month period preceding a request for that information, where payment of reasonable costs for doing so has been offered by those employees, and by telling an employee that hiring hall records could not be reviewed to obtain information to file a lawsuit against it.

#### REMEDY

Having found that Carpenters Local Union No. 35, United Brotherhood of Carpenters and Joiners of America, AFL-CIO has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to make available to Walter J. Endriuliatis, John Blanton, Bob Clark, Lawrence Reynolds, Burton P. Rowe, James Rich, and Fred Esson addresses and telephone numbers of persons registered for referral from its hiring hall during the 6-month period prior to May 4, 1993, and to provide each of them with photocopies or duplicates, or to permit each of them to make photocopies or duplicates, of hiring hall records requested in their letter of May 4, 1993, on payment of reasonable costs for doing so. See *Operating Engineers Local 513 (Various Employers)*, supra, 308 NLRB at fn. 1.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>7</sup>

#### ORDER

The Respondent, Carpenters Local Union No. 35, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, San Rafael, California, its officers, agents, and representatives, shall

##### 1. Cease and desist from

(a) Denying employees registered for referral from its exclusive hiring hall the right to addresses and telephone numbers of persons registered for referral from that hall.

(b) Denying employees registered for referral from its exclusive hiring hall the right to copies or duplicates of hiring hall records, on payment of reasonable costs for doing so, described in the letter of May 4, 1993, sent by Walter J. Endriuliatis, John Blanton, Bob Clark, Lawrence Reynolds, Burton P. Rowe, James Rich, and Fred Esson.

(c) Telling employees registered for referral from its exclusive hiring hall that they will not be allowed to review hiring hall records to obtain information to file lawsuits against it.

(d) 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) Honor the May 4, 1993 request of Walter J. Endriuliatis, John Blanton, Bob Clark, Lawrence Reynolds, Burton P. Rowe, James Rich, and Fred Esson for copies or

duplicates of hiring hall records, including addresses and telephone numbers of persons registered for referral from that hall, on payment of reasonable costs for those copies or duplicates or, alternatively, for allowing those employees to copy or duplicate those records.

(b) Post at its hiring hall copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

<sup>8</sup>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 deny employees registered for referral from our hiring hall the right to addresses and telephone numbers of persons who are registered for referral from our hiring hall.

WE WILL NOT deny employees registered for referral from our hiring hall the right to copies or duplicates of hiring hall records, on payment of reasonable costs for making those copies or duplicates.

WE WILL NOT tell employees registered for referral from our hiring hall that they will not be allowed to review hiring hall records to obtain information to file lawsuits against us.

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

WE WILL honor the May 4, 1993 request of Walter J. Endriuliatis, John Blanton, Bob Clark, Lawrence Reynolds, Burton P. Rowe, James Rich, and Fred Esson for copies or duplicates of hiring hall records, including addresses and telephone numbers of persons registered for referral from that hall, on payment of reasonable costs for those copies or duplicates or, alternatively, for allowing those employees to copy or duplicate those records.

CARPENTERS LOCAL UNION NO. 35, UNITED  
BROTHERHOOD OF CARPENTERS AND JOINERS  
OF AMERICA, AFL-CIO

<sup>7</sup>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.