

**International Brotherhood of Electrical Workers, Local 6, AFL-CIO (The San Francisco Electric Contractors Association; Butcher Electric) and Michael Berkowitz and La'Moyne Addleman and Jan Berroyer and Lee Bartl and John Finn and Lee M. Naranjo.** Cases 20-CB-7825, 20-CB-7843, 20-CB-7873, 20-CB-7882, 20-CB-7995, and 20-CB-8495

July 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

The principal issues in this case<sup>1</sup> are whether the judge correctly found that several of the Respondent's exclusive hiring hall rules, practices, and procedures violated Section 8(b)(1)(A) and (2) of the Act. In addition, there are issues whether statements made by the Respondent's hiring hall dispatcher, John Conroy, to hiring hall applicants Michael Berkowitz and La'Moyne Addleman violated Section 8(b)(1)(A). The judge found that only one statement made to Berkowitz was unlawful.

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>2</sup> and conclusions as modified and to adopt the recommended Order as modified.

1. With respect to statements made by dispatcher Conroy, Charging Party Berkowitz credibly testified about an intermittent conversation with Conroy over a 2-hour period on November 9, 1990. No one else was present. Conroy asked Berkowitz why he was "suing" the Union. Berkowitz responded, "It's the money." Conroy responded by saying that a good union brother would not sue a union. Conroy also said, "You know, we can turn you in to the unemployment people for turning down work." The Respondent had no such reporting policy or practice.

When Conroy and Berkowitz resumed their discussion later that day, Berkowitz said that he would be

<sup>1</sup>On February 11, 1992, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, a supporting brief, and an answering brief to the exceptions. The Respondent filed a reply to the cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

We grant the General Counsel's motion to strike statements in the Respondent's brief that refer to evidence that is not part of the record.

willing to bet Conroy \$1000 that Conroy would lose the case. Conroy asked for a week or two to think about it. As they were leaving, Berkowitz told Conroy that "if this case goes to trial the NLRB will make this case a class action." Conroy responded that if this case "became a class action that you will be killed."

The judge found that Conroy's parting statement violated Section 8(b)(1)(A). He concluded that the threat was "objectively perceived as a threat by Berkowitz," even if it may have been just a "rhetorical overstatement in the concluding moments of an impassioned debate." We disagree with this conclusion.

The test of whether a statement would reasonably tend to coerce an employee in the exercise of protected concerted activities is an objective one, requiring an assessment of all the circumstances in which the statement is made. Contrary to the judge, we find that Conroy's statement cannot reasonably be construed as a threat of adverse consequences, physical or otherwise, if Berkowitz' unfair labor practice charge led to "class action" litigation. The statement that Berkowitz would "be killed" in that event culminated a conversation in which each party confidently predicted victory in litigation. Under the circumstances described by Berkowitz, Conroy's statement would reasonably be construed as he claims it was intended, i.e., a metaphorical prediction of resounding defeat for a possible class action. In addition, there were no overt moves by Conroy that would be consistent with a threat actually to kill Berkowitz. We shall dismiss this allegation of the complaint.

On the other hand, we find that Conroy did make an unlawful statement in his conversation with Berkowitz when he explicitly threatened to take the unprecedented action of turning Berkowitz in to "the unemployment people." The General Counsel correctly states in cross-exceptions that the complaint was amended at hearing to encompass this statement. The judge clearly found that the statement was made, but he failed to rule on the merits of the amended complaint allegation. We find that Conroy's statement would reasonably be viewed as a threat to retaliate against Berkowitz' pursuit of the unfair labor practice charge. Conroy, therefore, violated Section 8(b)(1)(A) of the Act.

2. We agree with the judge that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by discriminatorily enforcing its hiring hall eligibility rule against the individual Charging Parties specifically and against travelers from other International Brotherhood of Electrical Workers (IBEW) locals in general.<sup>3</sup> We, there-

<sup>3</sup>In sum, the eligibility rule bars registration on Respondent Local 6's group I out-of-work list (the highest priority referral list) of any individual who is eligible for registration, even though not actually registered, on any other IBEW local's group I list. We wish to clarify the judge's statement, in sec. IV,D,1,b of his decision, that "the

*Continued*

fore, find it unnecessary to pass on the judge's alternative finding that the eligibility rule is unlawful on its face. To remedy the discrimination found, we find it appropriate to order the Respondent to refrain from enforcing its hiring hall rules, practices, and procedures in a discriminatory manner.

We further agree with the judge's findings that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by failing to provide information specifically requested by hiring hall users about relevant rules, practices, standards, and procedures of the hiring hall. We find it unnecessary to pass on the judge's additional finding that, even in the absence of a request, the Respondent acted unlawfully by failing to inform all hiring hall users of the rules and practices necessary for an intelligent utilization of the hiring hall. A finding of a violation in this regard would not materially affect the judge's recommended broad notification remedies, which we adopt in light of the Respondent's egregious pattern of arbitrary and discriminatory conduct with respect to travelers who seek employment through the Respondent's hiring hall.<sup>4</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Electrical Workers, Local 6, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to report a hiring hall user to unemployment officials in retaliation against the filing of an unfair labor practice charge.

(b) Failing and refusing to provide information specifically requested by hiring hall users about the rules, practices, standards, and procedures of the hiring hall.

(c) Maintaining referral questionnaires which mislead hiring hall users about residency requirements for group I eligibility in order to discourage and delay qualified travelers from registering on the group I out-of-work list.

(d) Enforcing an eligibility rule or any other hiring hall rule, practice, standard, or procedure in a manner which discriminatorily denies group I status to travelers.

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eligibility rule applies only to travelers and not to members of Local 6.' Although the rule on its face might hypothetically apply to Local 6 members who travel to other local hiring halls, as the Respondent contends, there is no evidence that this particular rule has ever been applied in this fashion.

The judge relied on Conroy's "threat to kill" remark made to Berkowitz as partial support for his finding of discriminatory enforcement of the eligibility rule. As previously discussed, we have found that this remark was not unlawful. Nevertheless, the other evidentiary factors cited by the judge are sufficient proof of the Respondent's discriminatory enforcement of the eligibility rule.

<sup>4</sup>We will substitute a new Order and notice with remedial provisions which conform to our modifications of the judge's analysis.

(e) Failing and refusing to allow eligible group I hiring hall applicants to register on the group I out-of-work list, thereby causing and/or attempting to cause them to lose employment opportunities they would have otherwise obtained.

(f) 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) For a period of 6 months, reduce to writing and post in the hiring hall a complete statement of all Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings. The written rules shall be kept current. Further, copies of these rules and all updates shall be mailed to each employer with whom Local 6 has a contract in sufficient numbers to allow for posting, if the employer is willing, at each jobsite employing individuals dispatched from the Respondent's hiring hall.

(b) Rescind referral questionnaires which create the mistaken impression about residency requirements for group I status and include in any questionnaires used within the 6-month notice period covered by this Order a statement that, on request, the Respondent will provide a complete written statement of all current Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings.

(c) In response to prior requests from individual hiring hall users, provide those individuals with the specific requested information which the Respondent failed to provide, including information about the requirements for registration on the group I out-of-work list, the reasons for denial of group I status, and the reasons why the referral appeal committee has denied an appeal of the Respondent's denial of group I status.

(d) For a period of 6 months, notify each hiring hall user requesting specific information about hiring hall operations and/or the user's current hiring hall referral status that, on request, the Respondent will also provide a complete written statement of all current Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings.

(e) For a period of 6 months, when announcing action on each hiring hall user's group I application or on a user's appeal to the referral appeal committee of an adverse ruling on such an application, supply a written explanation of the action taken, reciting the rules and practices and the factual findings supporting the determination. The notification shall contain a separate statement that, on request, the Respondent will also provide a complete written statement of all current Local 6 hiring hall rules, procedures, standards, and

practices, including those relating to referral appeal committee proceedings.

(f) Reclassify all hiring hall users who would have been eligible for or would have been placed on the group I list, but for the unfair labor practices found here, and notify each such individual, in writing, of the fact of reclassification.

(g) Make whole, with interest, all individuals who suffered losses as a result of the Respondent's unfair labor practices.

(h) Make available to the Regional Director for Region 20, for inspection and copying, Local 6's hiring hall and referral appeal committee books, records, correspondence, and other records of any kind which may be relevant to identifying those individuals who suffered a loss of employment opportunities as a result of the violations of the Act found here and to determining further the Respondent's compliance with all the terms of this Order.

(i) Post at its San Francisco, California hiring hall offices copies of the attached notice marked "Appendix."<sup>5</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 for 6 months in conspicuous places, including all places where notices to members and hiring hall users are customarily posted. Signed copies of the notice shall also be sent to each contracting employer of Local 6 in sufficient number to allow posting, if the employer is willing, at all current jobsites to which Local 6 hiring hall users are dispatched. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by other material.

(j) Mail a copy of the Board's notice and a copy of the complete statement of all current Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings, to each and every member of an IBEW local other than Local 6 who applied for but was denied registration on the Local 6 group I out-of-work list at any time from June 14, 1988, to the present.

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

## APPENDIX

NOTICE TO MEMBERS AND USERS OF THE HIRING  
HALL OF THE INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 6, AFL-CIO  
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 threaten to report a hiring hall user to unemployment officials in retaliation against the filing of an unfair labor practice charge.

WE WILL NOT fail and refuse to provide information specifically requested by hiring hall users about the rules, practices, standards, and procedures of the hiring hall.

WE WILL NOT use referral questionnaires which mislead hiring hall users about residency requirements for group I eligibility in order to discourage and delay qualified travelers from registering on the group I out-of-work list.

WE WILL NOT enforce an eligibility rule, or any other hiring hall rule, practice, standard, or procedure, in a manner which discriminatorily denies group I status to travelers.

WE WILL NOT fail and refuse to allow eligible group I hiring hall applicants to register on the group I out-of-work list, thereby causing and/or attempting to cause them to lose employment opportunities they would have otherwise obtained.

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, for a period of 6 months, reduce to writing and post in the hiring hall a complete statement of all Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings. The written rules shall be kept current. Further, WE WILL mail copies of these rules and all updates to each employer with whom Local 6 has a contract in sufficient numbers to allow for posting, if the employer is willing, at each jobsite employing individuals dispatched from our hiring hall.

WE WILL rescind referral questionnaires which create the mistaken impression about residency requirements for Local 6 group I status, and WE WILL include in any questionnaires used within the 6-month notice period covered by the Board's Order a statement that, on request, Local 6 will provide a complete written

<sup>5</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."

statement of all current Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings.

WE WILL, in response to prior requests from individual hiring hall users, provide those individuals with the specific requested information which we failed to provide, including information about the requirements for registration on the group I out-of-work list, the reasons for denial of group I status, and the reasons why the referral appeal committee has denied an appeal of our denial of group I status.

WE WILL, for a period of 6 months, notify each hiring hall user requesting specific information about hiring hall operations and/or the user's current hiring hall referral status that, on request, Local 6 will also provide a complete written statement of all current Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings.

WE WILL, for a period of 6 months, when announcing action on each hiring hall user's group I application or on a user's appeal to the referral appeal committee of an adverse ruling on such an application, supply a written explanation of the action taken, reciting the rules and practices and the factual findings supporting the determination. This explanation will contain a separate statement that, on request, Local 6 will also provide a complete written statement of all current Local 6 hiring hall rules, procedures, standards, and practices, including those relating to referral appeal committee proceedings.

WE WILL reclassify all hiring hall users who would have been eligible for or would have been placed on the group I list, but for the unfair labor practices which we have committed, and WE WILL notify each such individual, in writing, of the fact of reclassification.

WE WILL make whole, with interest, all individuals who suffered losses as a result of the unfair labor practices found to have been committed in the operation of Local 6's hiring hall.

**SPECIAL NOTICE TO HIRING HALL USERS  
WHO WERE DENIED GROUP I  
REGISTRATION ON OR AFTER  
JUNE 14, 1988**

Individuals who used our hiring hall since June 14, 1988, and believe they may have lost employment opportunities as a result of our conduct may contact the compliance officer for Region 20 of the Board at the

address or telephone number set forth below for further information.

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 6, AFL-  
CIO**

*Paula R. Katz, Esq.*, for the General Counsel.

*William J. Flynn and John L. Anderson, Esqs. (Neyhart, Anderson, Reilly & Freitas)*, of San Francisco, California, for the Respondent.

*Wendy A. Cheit and George P. Parisotto, Esqs. (Thierman, Cook, Brown & Prager)*, of San Francisco, California, for Charging Parties Berkowitz and Bartl.

**DECISION**

**STATEMENT OF THE CASE**

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial over the period December 10, 1990, to April 8, 1991, in San Francisco, California. Posthearing briefs were submitted on August 19, 1991.

The above-captioned case arose as follows. On December 13, 1988, Michael Berkowitz, an individual, filed a charge with Region 20 of the National Labor Relations Board (Region 20) docketed as Case 20-CB-7825 against the International Brotherhood of Electrical Workers, Local 6, AFL-CIO (Respondent or Local 6) and amended that charge on September 19, 1990. On January 12, 1989, La'Moyne Addleman, an individual, filed a charge docketed as Case 20-CB-7843 with Region 20 against Local 6. On February 10, 1989, Jan Berroyer, an individual, filed a charge with Region 20 docketed as Case 20-CB-7873 against Local 6. On February 21, 1989, Lee Bartl, an individual, filed a charge with Region 20 docketed as Case 20-CB-7882 against Local 6. On June 5, 1989, John Finn, an individual, filed a charge with Region 20 docketed as 20-CB-7995 against Local 6. On October 20, 1990, Lee M. Naranjo, an individual, filed a charge with Region 20 docketed as Case 20-CB-8495 against Local 6.

On February 28, 1990, the Regional Director for Region 20 (the Regional Director) issued an order consolidating cases, consolidated complaint and notice of hearing consolidating the first five cases noted above. On November 20, 1990, the Regional Director issued an order consolidating cases, amended consolidated complaint and notice of hearing consolidating all the above captioned cases. Timely answers to the complaint and amended complaint were received.

The amended consolidated complaint as further amended at the hearing alleges that Respondent committed unfair labor practices in the operation of its exclusive hiring hall which dispatches electricians to contractually bound employers in San Francisco, California. Generally, the complaint alleges that Local 6 failed to provide hiring hall users with proper notice of certain rules of hiring hall operations and appeal procedures, maintained and utilized misleading hiring hall

questionnaires, maintained and applied an improper rule disqualifying individuals for registering on book I if they were eligible to register on book I at any other local, applied the improper hiring hall rule and the other hiring hall rules and appeal procedures which had improperly been kept from hiring hall users to prevent hiring hall users including travelers from obtaining employment opportunities as book I registrants and, finally, threatened hiring hall users for filing charges with the Board. The complaint alleges these acts as violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act).

Local 6 does not dispute its status as a labor organization engaged in the operation of an exclusive hiring hall pursuant to collective-bargaining agreements and its own rules and procedures. Respondent contends that its rules and procedures are not improper under the Act and that it fully complied with all legal obligations to inform users of applicable rules. Further, Respondent in many cases denies the actions and omissions alleged as violative of the Act by the General Counsel ever in fact occurred or, in other cases, argues that the actions and omissions of Local 6 were not improper under the Act.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, to argue orally and to file posthearing briefs.

On the entire record here,<sup>1</sup> including helpful briefs from the General Counsel, Charging Parties Berkowitz and Bartl, and Respondent, and from my observation of the witnesses and their demeanor, I make the following

#### FINDINGS OF FACT<sup>2</sup>

##### I. JURISDICTION

At all times material, the San Francisco Electrical Contractors Association, with an office and place of business in San Francisco, California, has been an organization composed of employers engaged as electrical contractors in the construction industry. The San Francisco Electrical Contractors Association exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Local 6. At all times material Butcher Electric has been a California corporation with an office and place of business in San Jose, California, where it has been engaged as an electrical contractor in the building and construction industry.

At all relevant times Butcher Electric and the individual members of the San Francisco Electrical Contractors Association, in the course and conduct of their business operations, have annually performed services valued in excess of \$50,000 for customers within the State of California, each of which customers meets one of the Board's standards for assertion of jurisdiction on a direct basis.

<sup>1</sup>The General Counsel's unopposed motion to correct transcript is granted.

<sup>2</sup>As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

Based on the above, I find that Butcher Electric and the employer-members of the San Francisco Electrical Contractors Association at all times material have been and are now employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. LABOR ORGANIZATIONS

International Brotherhood of Electrical Workers, Local 6, AFL-CIO (sometimes the International or the IBEW), and its constituent local unions, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

The pleadings, as well as the thousands of pages of transcript, stipulations, and documents and the hundreds of pages of briefs, address various issues dealing with Respondent's operation of its hiring hall with respect to hiring hall registrants who are not members of Local 6, but generally are members of locals of the International Brotherhood of Electrical Workers, AFL-CIO, other than Local 6. This latter group of individuals have traditionally been referred to as travelers.<sup>3</sup>

The parties litigated closely a large variety of issues and situations involving the six Charging Parties here and others. In order to avoid confusion and increase comprehension, the presentation below develops the unfair labor practice issues primarily by type and does not primarily address the issues and allegations on a Charging Party by Charging Party basis or necessarily in the order the violations are alleged in the complaint.

##### A. Background

Local 6 has long been a local of the International Brotherhood of Electrical Workers, AFL-CIO, representing electrical workers employed by electrical contractor employers engaged in the construction industry in San Francisco, California. The jobs involved here are those of inside wiremen hereinafter referred to as electricians or electrical workers. In conjunction with its representation of electrical workers of various employers, Local 6 operates a hiring hall which by contractual agreement is the exclusive source of unit job applicants for signatory employers. Local 6 in conjunction with signatory employers and the State of California operates an apprenticeship program which accepts and trains apprentice electricians and, on satisfactory completion of the program, certifies program graduates as journeymen electricians.

Franz E. Glen has been for many years the business manager and financial secretary of Local 6. At relevant times John Conroy has been Local 6's dispatcher. Each is an agent of Local 6.

<sup>3</sup>The term traveler is a venerable one in both trade union and Board parlance. A traveler may be defined as a member of the same International union but different local of the union operating the hiring hall in the local area. The traveler is thus an out-of-area worker who has traveled to the local area seeking work in the trade. Travelers may remain in the area for long periods or even determine to remain permanently. The traveler in essence remains a traveler indefinitely no matter how long he or she works in the area so long as local union membership is maintained in the out-of-area local union rather than in the local in whose jurisdiction the traveler now works.

While the hiring hall registration rules and procedures quoted and discussed, *infra*, contain a series of eligibility requirements, the individuals at issue here were admittedly technically qualified and properly certified as inside wiremen and, further, had worked the necessary number of hours under the appropriate collective-bargaining agreement to meet the contractual "hours worked" requirement necessary to register on Local 6's group I out-of-work list. The sole qualification in dispute here is the contractual requirement of "residence" in the area which is met by conforming to other rules and requirements as will be more fully discussed below. Only those meeting the "residence" requirement are qualified to sign book I whose registrants receive priority dispatch over other books.

*B. Local 6's Hiring Hall Rules, Procedures, and Practices*

1. The contractual provisions

Respondent has for many years maintained a contractual relationship with the San Francisco Electrical Contractors Association (the Association). At all relevant times the collective-bargaining agreement between Local 6 and the Association has contained referral language which, save for immaterial wording changes, has remained the same from the early 1980s to the time of the hearing. The contract current at the time of the hearing had been in effect since June 1988. Article III of that contract is entitled "Referral Procedure—Union Security." The article provides that Respondent will be the exclusive source of referrals of applicants for employment, that the referents will be selected without discrimination by reason of union membership and that job applicant selection and referrals will be in accordance with article III, section 4 of the contract. Section 4 states, in part:

4. The Union shall maintain a register of applicants, who shall be unemployed, for employment established on the basis of the groups listed below. Each applicant for employment shall be registered in the highest priority group for which he qualifies.

GROUP I

All applicants for employment who have four (4) or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market . . . and who have been employed for a period of at least one (1) year<sup>4</sup> in the last four (4) years under a collective bargaining agreement between the parties in this area to this agreement.

GROUP II

All applicants for employment who have four (4) or more years experience at the trade.

GROUP III

All applicants for employment who have two (2) or more years experience at the trade.

<sup>4</sup>By agreement between the Local 6 and the Association effective February 12, 1982, 1 year of employment was defined as "at least 1764 hours in not less than 12 months."

GROUP IV

All applicants for employment who have worked at the trade for more than one (1) year.

. . . .

DEFINITIONS

"Normal construction labor market" is defined to mean the following geographical area:

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA. The above geographical area is agreed upon by the parties to include the areas defined by the Secretary of Labor to be the appropriate prevailing wage area . . . Plus the commuting distance adjacent thereto, which includes the area from which the normal labor supply is secured.

"Resident" means a person who has maintained his permanent home in the above defined geographic area<sup>5</sup> for a period of not less than one (1) year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

. . . .

5. The Union shall maintain an "Out of Work List" which shall list the applicants within each group in chronological order of the dates they register their availability for employment.

(a) An applicant who has registered on the Out of Work List must renew his application at the weekly role call or his name will be removed from the list.

. . . .

6. Employers shall advise the Business Manager of the Local Union of the number of applicants needed. The Business Manager shall refer applicants to the Employer by referring applicants in GROUP I, in the order of their places on the Out of Work List and then referring applicants in the same manner successively from the Out of Work List in GROUP II, then GROUP III and then GROUP IV.

. . . .

7. An Appeals Committee is hereby established composed of one member appointed by the Union, one member appointed by the Association, as the case may be, and a Public Member appointed by both of these members.

It shall be the function of the Appeals Committee to consider any complaint of any employee or applicant for employment arising out of the administration by the Local Union of Section 1, Item 3 to Section 1, Item 6 inclusive of this Article. The Appeals Committee shall have the power to make a final and binding decision on any such complaint, which shall be complied with by the Local Union. The Appeals Committee is authorized to issue procedural rules for the conduct of its business, but is not authorized to add, subtract from, or modify

<sup>5</sup>By Referral Appeal Committee decision effective October 7, 1982, "resident" was defined to be a person who maintains his permanent home in one of the following California Greater Bay Area counties: San Francisco, Alameda, San Mateo, Contra Costa, Marin, Sonoma, Napa, Solano, Santa Clara or San Benito. This interpretation was current as of the time of the hearing.

any of the provisions of this Agreement, and its decisions shall be in accord with this Agreement.

. . . .

9. A copy of the referral procedure set forth in the Agreement shall be posted on the Bulletin Board in the offices of the Local Union and in the offices of the Employers who are parties to this Agreement.

## 2. Other written provisions

The Association and Local 6 entered into a memorandum of understanding on or about April 6, 1989, which was effective by its terms on June 1, 1988, the effective date of the then new contract. The memorandum of understanding states:

The undersigned parties hereby agree that in order to preserve and protect the available job opportunities for electricians who reside in the Bay Area and to ensure that electrical contractors in the Bay Area continue to enjoy the availability of a stable and productive work force, the following provisions are agreed to:

1. The parties have consistently interpreted Article III, Section 7 of the collective bargaining agreement to mean that only applicants for employment may appear before the Referral Appeal Committee with a complaint regarding an applicant's referral status.

By this Memorandum of Understanding, the parties hereby ratify the long-standing practice and procedure of the Referral Appeal Committee in effectuating the parties' interpretation of that provision of the collective bargaining agreement. For reasons of economy and efficiency, the Referral Appeal Committee will only entertain appeals from applicants for employment.

Applicants for employment who file their appeals with the Referral Appeal Committee and thereafter are referred out for employment will have their appeals held in abeyance until such time as they again are applicants for employment. At such times and upon written request, an appeal held in abeyance may be reactivated and heard by the Referral Appeal Committee.

2. In order to assure a fair and orderly distribution of work opportunities within the Construction Labor Market, applicants for group I<sup>6</sup> referral status are not eligible for Group I referral if they are registered in Group I in any other IBEW Local Union. Any applicant who has been listed on a Group I out-of-work list at another local within the four years previous to an application in Local 6 must provide a letter from the Business Manager of that local stating that the applicant is no longer eligible to be on that Group I list.

To the extent that any of the above may be construed to be a modification of the current collective bargaining agreement, the undersigned parties to this Memorandum of Understanding deem it to be so.

<sup>6</sup>The terms "group" and "book" were used interchangeably in the documents entered into evidence and by the witnesses and counsel during the hearing and on brief. They are so used herein.

Thereafter the memorandum of agreement was posted at Local 6's offices where it could be seen by hiring hall users. The parties disputed when this posting occurred. This conflict will be discussed in greater detail, infra.

Accordingly to the unchallenged testimony of Glen, Local 6 posted the following notice in its hiring hall within a month of posting the memorandum of agreement:

## N O T I C E

TO ALL PERSONS

IF YOU WANT TO BE ON BOOK I IN LOCAL 6, YOU CANNOT BE ON BOOK I IN ANY OTHER IBEW LOCAL. YOU MUST BE UNEMPLOYED TO APPEAR BEFORE THE REFERRAL APPEAL COMMITTEE.

### 3. Local 6's referral questionnaires

The interpretation of the term "permanent home" in the contract referral language quoted supra became an issue in 1981 with Local 6's counsel proposing six questions designed to determine an applicant's permanent home. Counsel's opinion letter was submitted to the referral appeal committee which, on December 28, 1981, adopted the six questions from Local 6's counsel's position letter and a seventh, quoted below, as questions to be set forth in a questionnaire to be filled out by referral applicants. The questionnaire, with the seventh question added by the referral appeal committee as subsection (g), follows:

(a) Are you registered to vote within the area? \_\_\_\_\_

(b) Do you pay state and local taxes, are you no longer paying resident related taxes to another state or area? \_\_\_\_\_

(c) Do you have bank accounts and/or investments within the area? \_\_\_\_\_

(d) Do your children, if any, attend local schools? \_\_\_\_\_

(e) Are you[r] vehicles registered to your area residence rather than in another area or state? \_\_\_\_\_

(f) Do you possess a valid California Drivers License on which your area address appears? \_\_\_\_\_

(g) Have you lived in the normal commute area for a period of 4 years? \_\_\_\_\_

(1) If yes, list address: \_\_\_\_\_  
\_\_\_\_\_

The referral appeal committee on January 8, 1982, again considered the referral questionnaire and determined to make some minor changes and to add the following additional language as set forth in item 5 of the minute of that meeting:

5. At the bottom of the Referral Questionnaire add a signature space and date space immediately preceded by the following:

The above information is considered in total and no individual item will qualify or disqualify an applicant.

Any applicant may appeal the findings from this questionnaire to the Appeals Committee as outlined

in Sub Section 7 of Section 1 of Article III of the Agreement.

All of the above are true and correct to the best of my knowledge.

On January 14, 1982, in a letter to all inside wiremen, Glen explained the referral procedure rules and listed the questions on the new questionnaire that were thereafter to be completed when applicants registered for work in the referral office.

A revised questionnaire came into use sometime before April 9, 1985 (1985 revision). The revised version again made minor changes and one major addition. A new question, "(h)" was listed:

If your four (4) years experience is outside of the Local Union #6 geographical jurisdiction, please attach four (4) years documentation to this questionnaire.

This questionnaire was in use at least until March 14, 1989.

The current questionnaire, which Glen testified was introduced as stores of the 1985 revision questionnaire were exhausted, has been in use since at least August 10, 1989 (1989 revision). This questionnaire has minor changes from the 1985 revision. It also deletes the question quoted under (h), supra, and adds two new initial questions and an instruction as follows:

(a) For which group are you applying? \_\_\_\_\_

(b) If Group I, are you now or have you been on a Group I out-of-work list in any other IBEW local union within the last four years? \_\_\_\_\_

If yes, you must produce a letter from the Business Manager of that local union stating that you are no longer eligible to be on that Group I List.

4. History of Local 6's hiring hall rules, procedures, and practices

a. *The restriction of referral appeals to unemployed appellants*

The language of article III, section 1, item 7 of the 1988-1990 agreement providing that the appeals committee shall "consider any complaint of any employee or applicant for employment arising out of the administration by Local 6 of the contractual referral procedure" had been in earlier agreements dating back at least to 1978.

Bartlett Dickson, the chapter manager of the Association, testified that to his knowledge the referral appeal committee had without exception limited its review of referral decisions to those filed by unemployed applicants. Glen testified similarly. The minutes of the referral appeal committee entered into evidence showed the application of this restriction to an appellant as early as 1982 with numerous similar applications thereafter. On other occasions the referral appeal committee denied employed persons' appeals on their merits as well as on the appellants' lack of standing because of their employment status. In yet other instances the merits of appeals were considered to the extent that appellants were told that, once unemployed, they would be allowed to register on the desired list. On one occasion an appeal was granted to an employed person not then employed as an inside wireman.

There is no suggestion that, prior to the preparation and posting of the memorandum of agreement and notice, quoted supra, the "unemployment" requirement as applied by the appeals committee had ever been posted in the hiring hall or otherwise communicated generally to hiring hall users. Referral appeal committee minutes which were regularly prepared respecting the committee's actions often set forth a specific rationale for such determinations and sometimes referred to this rule. These minutes were not given to appellants, even on request, nor otherwise made public.

Glen testified without greater specificity that the rule requiring appellants to be unemployed was commonly known among hiring hall users. The testimony of the various Charging Parties was generally to the effect that travelers were essentially unaware of the rule. This dispute is discussed in greater detail, infra.

b. *The effect of Local 6 hiring hall group I applicants' status at other IBEW Locals on those applicants' group I registration rights with Local 6*

The General Counsel carefully distinguishes between the following determinations by Local 6 under its hiring hall rules. First, Local 6 applies what the General Counsel refers to as a "registration rule." This rule limits those allowed to register on Local 6's group I out-of-work list to those applicants not currently registered<sup>7</sup> on book I in any other IBEW Local hiring hall out-of-work list. Second, Local 6 applies what the General Counsel refers to as an "eligibility rule." This rule limits Local 6 group I registrants to those not currently eligible<sup>8</sup> to register on book I on any other IBEW Local hiring hall out-of-work list. Clearly the memorandum of understanding quoted supra by its terms contains each rule as defined by the General Counsel within its paragraph numbered "2." Counsel for Respondent on brief simply refers to this single memorandum of understanding rule as the "no double dipping rule." Respondent points out that there is some difficulty in distinguishing between the General Counsel's two rules when looking at Local 6's actions during relevant periods because Local 6 simply did not consistently treat the two aspects of its rule in a discrete and independent fashion. In light of the General Counsel's independent theories of violations of the Act, however, the two rules, even if simply different aspects of the same rule, must be separately considered. Accordingly, the General Counsel's definitions and nomenclature will be hereinafter utilized.

(1) The registration rule

Glen and Dickson each testified that the registration requirement as described supra has been a longstanding and consistently enforced rule applied by Local 6. Numerous circumstances where a referrant's registration status in his home

<sup>7</sup> "Registered" as the term is used here refers to the act of physically entering one's name on the out-of-work list and following whatever procedures are required to keep the applicant current on the out-of-work list and eligible for dispatch when his or her name is reached in the dispatch process.

<sup>8</sup> "Eligible" as the term is used here is as commonly defined. Thus it means qualified or allowed to act. No actual attempt to register on an out-of-work list at any relevant time is necessary to become eligible to do so. The term is used to describe the applicants' status not their actions.

local was the determining factor in decisions by the referral appeal committee appeals are in the record. The General Counsel does not argue that the "registration rule" is of recent vintage or of recent or uneven application.

Save for the contract, the Memorandum of Understanding, the notice, and the August 1989 questionnaire for referral users, there is no written communication to hiring hall users generally which contains information respecting the eligibility or registration rule. The dates of the posting of the memorandum of understanding and notice and the extent of hiring hall user knowledge of these rules are in dispute and are discussed, *infra*.

## (2) The eligibility rule

There was no agreement as to when the eligibility rule was first applied by Local 6. The record evidence is, as Respondent counsel has noted, ambiguous because no distinction between eligibility for and actual registration on another local union's book I was regularly made. The General Counsel argues the rule is of recent vintage<sup>9</sup> and Respondent argues that the rule is longstanding.

Referral appeal committee minutes contain some references to appellant "eligibility" for book I in other locals. The minutes also contain other more frequent references to appellants as "not in group I" or "group I in home local" which could be interpreted as addressing actual registration on book I or simply eligibility to so register.

Since some of these entries refer to locals substantially distant from Local 6 it is likely that at least some of the references are to simple eligibility. It is improbable that many travelers would be actually registered in a distant hiring hall while pursuing book I in San Francisco. Further, as Respondent argues on brief, there is no evidence that Local 6 ever knowingly allowed a registrant to sign book I when eligible to do so at another local.

As noted *supra*, Dickson and Glen testified that the conjoined eligibility and registration rules were longstanding and had been uniformly applied. The memorandum of understanding, quoted in full *supra*, sets forth the entire "no dipping rule" along with the referral appeal committee rule dealing with standing. The referral appeal committee rule is specifically characterized in the memorandum of understanding as "long-standing" while the "no double dipping rule" is specifically not so characterized.

### C. Overview of Events Concerning the Individual Charging Parties

#### 1. Michael Berkowitz

Michael Berkowitz has been a longtime resident of Sonoma County, California. He has also long been a member of Local 551, one of several locals of the International Brotherhood of Electrical Workers, AFL-CIO, located within Local 6's "resident" counties, and a user of Local 551's hiring hall.

<sup>9</sup>The General Counsel argues on brief at 11:

The record evidence does not establish that before the fall of 1988, Local 6 considered a hiring hall's "eligibility" for group I elsewhere to be a factor in whether he could register on Local 6's group I.

Following an October 28, 1988 layoff, on October 31, 1988, Berkowitz went to Local 6's hiring hall to register for book I on the out-of-work list. Berkowitz filled out the appropriate forms including a 1985 revision questionnaire showing his longstanding local residence. At that time Berkowitz was not registered on Local 551's out-of-work list and had not been in calendar 1988. He had worked the requisite contract hours to qualify for Local 6's group I. He was also, however, eligible to register on Local 551's group I out-of-work-list.<sup>10</sup>

On November 1, 1988, Berkowitz learned he had been registered by Local 6 on book II rather than book I. That same day he prepared and delivered to Local 6 a letter requesting placement on group I. The letter asserted he met all the contractual requirements for such registration. By subsequent letter given to Local 6 that same day, Berkowitz sought a hearing on the rejection of his group I registration request. Franz E. Glen, business manager-financial secretary of Local 6 at all relevant times, responded by letter dated November 1, 1988, which announced he was referring the issue to the referral appeal committee.

Berkowitz attended his November 18, 1988 referral appeal committee hearing. Berkowitz testified that he told the body that he had not signed Local 551's book for over 2 years, but that he was eligible to register on book I in that Local. Berkowitz was not told of the committee's decision on his appeal at the meeting.

The referral appeal committee meeting minutes for that date note that Berkowitz' appeal was denied because "[h]e . . . is on the out-of-work list. He said he is Group I in L.U. 551." Consistent with practice, Berkowitz was not given a copy of this minute. Rather, Glen by letter dated November 21, 1988, informed Berkowitz:

The Referral Appeal Committee at their meeting held on November 18, 1988 took the following action regarding your appeal.

Based on the information before the Committee, the Committee finds that your appeal at this time, is denied.

Berkowitz responded with an undated letter received by Local 6 on November 24, 1988, with the following text:

Based on the information that I have read, I can't find a reasonable reason for denial of my request, by said committee. Please define terms, conditions and or reasons for said denial. Could you enumerate reasons for denial of said request in written form as per my request.

Glen responded by letter dated November 29, 1988:

We are in receipt of your letter of November 25, 1988 which should have been sent to the Referral Appeal Committee.

<sup>10</sup>Local 551's hiring hall eligibility rules like Local 6 and many other locals of the IBEW whose contracts were entered into evidence, provided for group I eligibility for those otherwise qualified who had worked 1 year in the previous four for qualifying employers under the contract. Berkowitz met that requirement with Local 551.

We will forward your letter to the Referral Appeal Committee for their next meeting.

Berkowitz testified that he received no other information from Local 6 or the referral appeal committee respecting this request, his appeal, or his group I registration rejection.

On December 13, 1988, Berkowitz filed a charge docketed as Case 20-CB-7825. That charge, one of those underlying the instant consolidated proceeding, alleges that Local 6 restrained and coerced John Giertz in the exercise of his section rights by refusing to let him sign the group I list even though he met the requirements for such registration. The insertion of the name of Giertz was apparently a clerical error on the part of the Board's Regional Office staff in preparing the charge,<sup>11</sup> but Berkowitz signed the form as prepared and filed it with the Regional Office. Thereafter no one seems to have noticed that Berkowitz' charge carried another's name in the allegation portion. Counsel for Local 6 responded to the Region respecting both charges, i.e., Cases 20-CB-7821, Giertz' charge, and Case 20-CB-7825, Berkowitz' charge, by letter dated December 27, 1988.

The following is information regarding the unfair labor practice charges filed by Michael Berkowitz and John Giertz.

Franz Glen, Business Manager at Local 6, telephoned the Business Manager at IBEW Local 551 in Santa Rosa regarding the Book One status of both Berkowitz and Giertz. This phone call was made prior to a Referral Appeal Committee meeting that day. The Business Manager at Local 551 told Glen that both Berkowitz and Giertz were on Book One in their home local. In fact, Berkowitz appeared at the Referral Appeal Committee hearing and admitted that.

As you know, there is a long-standing policy that persons who enjoy book I status in one's home local, may not be in book I in Local 6.

On January 11, 1989, the Regional Director for Region 20, Robert H. Miller, dismissed Berkowitz' charge by letter containing the following paragraph:

The evidence does not support your contention that the Union acted in an arbitrary or discriminatory manner when it denied you Book one status. Rather, the investigation revealed that you have Book One status at another local and that the Union has uniformly applied a long-standing practice of not granting Book One status to individuals who have Book One status at another local. It is further concluded that this practice is not unlawful. I am, therefore, refusing to issue complaint in this matter.

The Regional Director rescinded his dismissal letter by letter dated March 28, 1989.

After receipt of the dismissal letter, Berkowitz registered on book I in Local 551 on January 25, 1989. Berkowitz continued to register on Local 6's book II on August 10, November 2, and December 19, 1989. On February 9, 1990, Berkowitz was registered on book I with Local 6.

<sup>11</sup> Giertz filed a charge, Case 20-CB-7821, against Local 6 just before Berkowitz filed his charge on essentially similar grounds. That charge is not part of this proceeding.

Berkowitz testified that during the registration and appeal process no agent of Local 6 or the referral appeal committee informed him of the hiring hall rules or, more particularly, the existence of a rule or rules limiting registration rights in Local 6's hiring hall based on a traveler's registration on or eligibility to register on his home local's group I out-of-work list.

On November 9, 1989, Berkowitz had a lengthy conversation with Jack Conroy, Local 6's dispatcher. Berkowitz testified that Conroy told him that Berkowitz could be "turned in" to the unemployment insurance administrators for refusing work—a practice Local 6 did not undertake. At the conversation's end the two turned again to Berkowitz' action against Local 6 and the possible outcome of the litigation. Berkowitz testified that he told Conroy that his charge would be turned into a "class action" by the NLRB. He recalled that Conroy responded: "[I]f this case becomes a class action, that you will be killed." Conroy testified that the conversation occurred and did not deny the unemployment reference. Respecting the class action portion of the conversation, Conroy further recalled that strong words were used but that they were used by him to describe what would happen to Berkowitz' case metaphorically rather than to Berkowitz in a direct, physical sense.

## 2. La'Moyne Addleman

La'Moyne Addleman is a member of Local 401 of the IBEW located in Reno, Nevada. Addleman moved to the San Francisco Bay Area in early July 1987. He registered on Local 6's group II list and was dispatched on July 24, 1987, to an inside wireman's position which he held to September 30, 1988. Addleman has lived and worked in Local 6's jurisdiction since that July 1987 dispatch.

On July 25, 1988, having now worked 1 calendar year under a Local 6 contract, Addleman wrote to Local 6 seeking a determination that he met all the qualifications of Local 6's group I under the contract save for residency. He asked that, if Glen disagreed with this assertion, that Glen should specify each qualification Addleman did not meet and "specify all the reasons that I don't meet them."

Glen responded by letter dated July 28, 1988, answering: "Qualifications for specific referral are determined, as defined in the Agreement, when an applicant registers in the referral office." Addleman by letter dated August 2, 1988, to Glen took issue with Glen's refusal to "prequalify" him. Glen responded by letter dated August 3, 1988, with the following body.

We are in receipt of your second letter regarding referral. Our reply to your first letter answered your questions but you don't seem to understand it.

The complete referral procedure is contained in Article III of the Agreement and has been approved by the International as required by the Constitution.

We again refer you to Sub-section 4 of Section 1 of Article III of the Agreement.

Addleman answered with a letter dated August 3, 1988, with the following text:

Under the terms of the Inside Wireman Agreement, Article III, Referral Procedure—Union Security, Section

1, Item 4, Group I, that section states that in order to qualify to register as an applicant in Group I the applicant must be a resident of the geographical area. The "DEFINITIONS" section following this item defines "Residents" as ". . . a person who has maintained his permanent home in the above defined geographical area for a period of not less than one (1) year . . . ."

In order to know when he has met the requirements of residency, one needs to know precisely what your requirements are. Therefore, at this time, I am requesting a complete and final list of what you require as proof of satisfaction of that residency requirement.

Addleman wrote another letter dated August 9, 1988, to Glen further disputing Local 6's practice of not "pre-qualifying" registrants. On August 30, 1988, Addleman wrote Glen asserting that as of August 10, 1988, he had been a permanent resident of the city and county of San Francisco for "one full year." He also asked for responses to his letters of August 3 and 9. Glen by letter dated September 6, 1988, answered: "We are in receipt of your letter of August 30, 1988. We refer you to our previous response to your inquiry."

Addleman testified that no agent of Local 6 or the referral appeal committee ever informed him verbally or otherwise of the rulings and interpretations Local 6 maintained for determining residency for the purpose of group I registration.

Addleman was laid off on September 30, 1988, and went to Local 6's office to register on the out-of-work list. He filled out the current questionnaire and submitted it to Conroy. Conroy placed Addleman on book II and advised Addleman to write a letter to Glen to get on book I. On October 3, 1988, Addleman filed a charge docketed as Case 20-CB-7759 against Local 6. The charge, not one of the charges underlying the instant proceeding, stated:

During the most recent six-month period, the above-named labor organization has breached its duty of fair representation by failing and refusing to allow La'Moyne E. Addleman to register on the Group I out-of-work list although fully qualified to do so, by failing and refusing to clarify the procedures necessary for registration to the Group I out-of-work list, and by promulgating confusing and arbitrary requirements for such registration in an attempt to delay prompt registration.

On October 5, 1988, Addleman wrote a letter to Local 6 petitioning to be registered on group I and included a new questionnaire which noted for the first time that Addleman had a California State driver's license.<sup>12</sup> In his letter Addleman complained of not having received a copy of the questionnaire in response to his earlier letters. He also asserted:

I am not qualified for the Group I out of work list in any other Local of the I.B.E.W., nor am I registered on any out of work list in any other Local of the I.B.E.W.

Glen responded by letter dated that same day and stating in its entirety:

In reply to your letter of October 5, 1988, please be advised that our records show that you are registered on the highest priority group for which you qualify.

You may appeal this to the Referral Appeal Committee if you so desire.

Addleman responded with two letters dated October 10, 1988. One letter to Glen sought "specific reason(s)" for the denial of his petition for group I status "so that I can adequately prepare for the appeal hearing." The second letter to the referral appeal committee chairman appealed his denial of group I status and described his letter of that same day to Glen seeking the reasons for the denial. Addleman sought in his letter to have the referral appeal committee "require Glen to comply with my request [for reasons]."

Glen on October 10, 1988, sent Addleman a letter acknowledging receipt of his letter to the referral appeal committee and telling him he would be notified of the date of the referral appeal committee hearing. On October 20, 1988, Glen informed Addleman of the November 18, 1988 date of his hearing.

Addleman went to Local 6's office on October 21, 1988, and there had a conversation with Dispatcher Conroy as Conroy was closing the office. Addleman testified that Conroy expressed unhappiness with Addleman's challenge to the hiring hall process and his filing of charges with the Board. Conroy told Addleman he need not have had the difficulty he had experienced if he had listened to Conroy's "advice" and initially filed a petition for book I. Addleman responded that he had done so without success. Conroy asked if he had appealed the Local's refusal to allow him to register on book I and Addleman told him that he had. Addleman recalled that he then asked Conroy if he knew anything about the appeal but that Conroy said no, the appeal was beyond him and not something he got involved in. The conversation continued with Addleman taking the position he had no choice but to protest and Conroy complaining of the legal costs to the local and questioning Addleman's judgment in proceeding.

Addleman thereafter withdrew his charge in Case 20-CB-7759, which withdrawal was approved by the Regional Director by letter dated November 18, 1988.

Addleman attended the referral appeal committee hearing on November 18, 1988. While waiting outside the hearing room with other travelers, Addleman testified he heard traveler Lauten and two others discussing the proposition that only unemployed persons could bring an appeal. Addleman challenged this assertion as ridiculous. Lauten responded, however, that he had learned of this fact and had therefore quit his employment the night before.

Once called into the hearing, Addleman told the committee in response to questions that he was then employed in the jurisdiction as an inside wireman. His California driver's license was inspected. He gave his current San Francisco address and discussed his former addresses in the area. Addleman told the committee he was not then on any other book I out-of-work-list and that he had not worked in his home local, Reno, Nevada, for several years nor signed the books there in that period. At no time during the meeting was Addleman told the determination of the committee.

The committee denied Addleman's appeal. Glen by letter dated November 21, 1988, informed Addleman that the com-

<sup>12</sup> Addleman had obtained a license in the meantime.

mittee had determined that Addleman's "appeal is not properly before the Committee at this time."

By letter dated and delivered on January 6, 1989, Addleman complained to Local 6 of its "unpublished terms for obtaining group I hiring status" and again requested group I status. He further stated: "Should you again deny me this status, please provide me the reason why my appeal was not properly before the appeals committee."

By letter to Addleman dated January 9, 1989, Glen defended the referral appeal committee's action. His final paragraph stated:

As you are aware, the referral provisions state that an applicant will be registered in the highest group for which they qualify. Since you are not an applicant for employment we cannot determine your referral group status at this time.

No further communications were exchanged. Addleman filed the charge involved here, Case 20-CB-7873, on January 12, 1989. He was placed on group I in October 1990.

### 3. Jan Berroyer

Jan Berroyer has for many years been a member of Local 606, International Brotherhood of Electrical Workers, AFL-CIO, in Orlando, Florida. In November 1976 he moved to Fremont, Alameda County, California, and has not since lived or worked in Florida nor registered on Local 606's out-of-work lists.

Berroyer signed Local 6's out-of-work list in group II in November 1986 and was dispatched in April 1987. After being laid off in November 1988, Berroyer went to Local 6 on November 14, 1988, and sought registration on book I submitting a letter listing his qualifications. On November 16, 1988, Glen sent a letter to Berroyer telling him he was "presently registered on the highest priority referral group for which you qualify," i.e., group II. The letter also provided Berroyer could appeal this determination at the November 18, 1988 referral appeal committee meeting concluding "your request will be on the agenda."

Berroyer attended the hearing. He told the committee members he had worked the requisite number of hours under the contract. Asked if he was eligible to sign book I in any other local, Berroyer said he doubted so because he had not worked the requisite number of hours required by the contract. The committee did not announce its decision to Berroyer. Glen testified he had been informed by Local 606 that Berroyer was eligible for Local 606's group I and that the committee when informed by Glen of this fact denied Berroyer's appeal for that reason.

On November 21, 1988, Glen wrote Berroyer informing him, without more, that his appeal had been denied. Berroyer was not provided with a copy of the committee minute which set forth the rationale for the denial. As of this time, Berroyer was without any actual or constructive knowledge of either the registration or the eligibility rule as it applied to Local 6.

As the result of a charge filed by Berroyer, not part of this proceeding, counsel for Local 6 informed the Board, and the Board in mid-December 1988 informed Berroyer, that Local 606 had reported to Local 6 that Berroyer "is on book I status at that local." Local 6's position as reported to the Board

in its reply to the charge was that under its "long standing policy" a person with book I "status" in another IBEW local is not eligible for book I in Local 6.

In mid-December 1988 Berroyer telephoned Local 606's business manager, Dagley, and asked if Local 606 was carrying him in group I. He recalled Dagley told him that Local 606 carries local members on book I "forever." Berroyer challenged this rule as not in conformity with the applicable collective-bargaining agreement and asked to be taken off group I. Dagley answered that he did not know if this could be done but said he would check. In Berroyer's recollection Dagley added that taking a member off group I would be without precedent for a member's home local.<sup>13</sup>

On January 6, 1989, Berroyer wrote to Local 606 seeking to be reduced to group II status. He received a reply from Local 606 dated January 12, 1989, indicating he was no longer eligible for book I. This letter was conveyed to Local 6 by no later than January 19, 1989. Glen testified that based on this letter Local 6 determined in February to allow Berroyer book I status.

Berroyer next registered on Local 6's out-of-work list on March 27, 1989. He was initially classified as book II but, on April 4, 1989, was upgraded to book I.

### 4. Lee Bartl

Lee Bartl has been for many years a resident of Sebastapol, Sonoma County, California. He has been for over 10 years a member of Santa Rosa, Sonoma County, California based Local 551 of the International Brotherhood of Electrical Workers, AFL-CIO. He first registered on Local 6's out-of-work list under group II in July 1986 and thereafter obtained dispatches from Local 6's hiring hall. At the time of his layoff from an electrical contractor on October 17, 1988, Bartl met the group I registrant minimum hours worked requirement in both Local 6 and Local 551.

<sup>13</sup>The General Counsel on brief at 64 fn. 65 asked that I reconsider my ruling at trial limiting the receipt of Dagley's statements to Berroyer as statements told to Berroyer and refusing to receive the statements of Dagley for their truth. Such out-of-court statements are clearly hearsay. The General Counsel seeks their substantive receipt as statements falling within the hearsay exception of Federal Rule of Evidence 804(b)(3), i.e., as a statement against interest. I find the statements do not fall within the rule and reaffirm my ruling here. The General Counsel's argument seems implicitly to be that under the Act and the appropriate contractual arrangements existing in Local 606 at the time the statement was made, such conduct would have been improper. The General Counsel's argument further seems to assume that a statement admitting that this was true was against the Local's agent's interest and that the agent would have known that this was so at the time he spoke. This chain is simply too attenuated in my view to qualify the statement of Dagley under Rule 804(b)(3). It is simply not sufficiently obvious that a local union official's admission to a member that the local maintains a general rule keeping members "forever" on group I, without more, is a statement which a union official would likely believe would subject him to civil liability.

Further as discussed, *infra*, because of the manner Local 6 applies its eligibility rules, it is the report of the home local respecting the traveler's home local group I status which is critical, not the underlying reality of the actual objective status. Therefore, for purposes of this case, what is reported by home local agents like Dagley here-in is of great relevance to the resolution of the issues here.

On October 18, 1988, Bartl went to Local 6, filled out a referral questionnaire, and submitted the questionnaire and a letter reciting his qualifications. At roll call later that day Bartl learned he had been registered on book II. He inquired about this fact with Local 6 Business Representative John Walsh who told him his application for group I would be considered and Bartl would be told of its result. Walsh also told Bartl he could not be on book I at any other IBEW local and qualify for book I in Local 6. Bartl had last registered on Local 551's group I in June 1988 and would not do so again until February 21, 1989.

Bartl delivered a letter to Local 6 on October 19, 1988, requesting a hearing before the referral appeal committee on his classification on October 18, 1988, as a group II registrant. The letter asked that Local 6 "inform me concerning the nature of any problem or problems and I will do my utmost to assist in their resolution." On October 20, 1988, Glen informed Bartl of the scheduling of his appeal for November 18, 1988, but did not otherwise address Bartl's prior communications.

On October 25, 1988, Bartl again wrote to Glen. The final paragraphs of the letter state:

During my meeting on October 18, 1988, with John Walsh he assured me that if there were any deficiencies in my qualification documentation or any other problems concerning my application that I would be informed of them.

Because I have received a Referral Appeal Committee date you must feel a problem exists.

Please advise me what it is so that I m[a]y correct it for you and hopefully avoid the necessity for my appeal hearing and further collierization [sic].

No response to this letter was forthcoming from Local 6.

Bartl was dispatched from book II on November 8 for about 2 weeks. He was thus employed at the time he attended his November 18, 1988 referral committee hearing. At the hearing he told the committee members he was then employed. He was asked if he was on book I in Local 551 and said he did not know inasmuch as he had not worked out of the Local for some time. The committee did not announce a decision at the meeting.

The committee minute reflects that Bartl's appeal was denied because of his employment at the time of the hearing. On November 21, 1988, Glen sent a letter to Bartl telling him only that his appeal had been denied as "not properly before" the committee.

Bartl again registered on Local 6's out-of-work list on November 22, 1988, filling out a new questionnaire. He was placed on book II.

Bartl responded to Glen's letter of November 21, 1988, by letter dated November 29, 1988. The letter asks:

In a matter of such great significance I feel that it is of the utmost importance for the Committee to explain to me completely and in detail the reason or reasons for their decision and quote the rules and their source documents which pertain to the action taken.

I would very much appreciate a timely response from the Committee addressing all of my above mentioned requests.

Also would you please include a copy of the Referral Appeal Committee hearing of November 18, 1988 minutes with your reply.

Glen responded with a letter dated November 29, 1988, informing Bartl his letter "should have been sent to the Referral Appeal Committee" and indicating he would so forward it "for their next meeting." Subsequent correspondence was exchanged but no further response from Glen or the appeal committee on a rationale for the denial or a copy of the minutes of the November 18, 1988 meeting was forthcoming.

Bartl sought review with the International. As part of an exchange of correspondence, International Vice President McCann told Bartl in a February 1989 letter that "the Appeals Committee's position [is] that if you are working, your appeal is not properly before them." McCann explained in his letter that this was the reason that the committee had decided Bartl's appeal was not properly before them.

On February 21, 1989, Bartl again wrote to Local 6 requesting to be placed on book I and on February 22, 1989, appealed the denial he anticipated would be issued. On February 27, 1989, Glen acknowledged the two letters but protested that Local 6 had not acted on the original request when it received the second letter appealing the as-yet unconsummated determination of the Local. The letter does not further address Bartl's plea but indicates that Bartl requested a hearing before the referral appeal committee and that the correspondence would be forwarded to that body.

Having been on Local 6's book II until February 21, 1989, on that date Bartl also signed Local 551's book I. Bartl attended the referral appeal committee's May 19, 1989. At the hearing he told the members he was currently employed as an inside wireman, a position he had acquired via a dispatch from Local 551. Bartl was told he could not be on book I in Local 6 if he was book I elsewhere.

The referral committee's minute of its decision indicated Bartl's appeal was denied because he was employed and therefore not eligible to appeal and because he was "Group I in Local Union 551." Glen sent Bartl a letter dated May 24, 1989, stating that the committee has determined that "your appeal is not properly before the Committee and that you do not meet the requirements for group I and your appeal is denied."

On February 10, 1990, Bartl again applied for Local 6's book I. At the time he was eligible for group I at Local 551 but has not signed that book for more than 30 days and, under local rules, his name would have been removed from the active roster of registrants. Glen responded by letter dated February 21 stating that Local 6's "records show that at this time you do not meet the requirements of Group I." By letter dated February 22, 1990, Bartl sought a hearing. On February 23, 1990, he wrote Glen asking, "[W]hy you feel that I do not currently meet your requirements for Group I." Local 6 did not respond.

On April 17, 1990, Bartl's counsel wrote to Glen seeking a hearing date before the referral appeal committee. The letter continued, quoting paragraph 3 of item 1 of the memorandum of understanding quoted, supra, asking that his previous appeal denial be reactivated under the assumption that Bartl's appeal "was apparently held in abeyance because Bartl was employed on the date of the Referral Appeal Committee hearing."

Glen's response of April 23, 1990, stated in part:

We are not aware of any such rule that you cite as paragraph 3 of Item 1. We suggest you read our referral appeal as contained in our Agreement. Your office has a copy.

In June 1990, Bartl wrote Local 551 seeking to end his eligibility from group I in Local 551. On November 27, 1990, Local 551 wrote a letter stating that as a result of Bartl's having worked fewer than 2000 hours under the contract in the previous 4 years, he was no longer eligible for group I in Local 551. In December 1990, Bartl learned he had been placed on book I by Local 6.

#### 5. John Finn

John Finn joined Local 551 in 1983 and completed his apprenticeship becoming a journeyman inside wireman in June 1986. At that time he registered on Local 6's out-of-work list and within a few months received a dispatch to a position he held until February 1, 1989—a period in excess of 3 years.

On February 1, 1989, Finn went to Local 6's hall and sought to register on the out-of-work list. Conroy gave Finn an application for book II and a then current questionnaire each of which he completed. Conroy told him he needed to write a letter to apply for book I. Finn testified that he did not know nor was he informed of the eligibility and/or registration rules maintained by Local 6, although he did read the Berkowitz NLRB dismissal letter posted in the hiring hall.

The following day Finn signed book I at Local 551. On February 12, 1989, Finn sent Glen a letter asking to be placed on book I. Finn's letter makes no reference to being eligible to register or having the week before registered on Local 551's book I. By letter dated February 17, 1989, Glen denied Finn's request for book I registration noting: "[o]ur records indicate that you are Group I, in your home local, and therefore your request is denied."

Finn appealed this decision and attended the May 19, 1989 referral appeal committee meeting. At the time of the meeting, Finn had just been laid off and had not as yet signed either Local 6's or Local 551's out-of-work lists. Finn reported these facts to the committee. Glen, in Finn's recollection, asked him: "[i]f you were to sign in Santa Rosa, which book would you sign, book I or Book II?" When Finn answered that he would likely register on book I, Glen answered, "[T]hat's it. We can't let you have Book I here if you are still able to sign Book I there." The committee's minute indicates Finn's appeal was denied because "he could not be Group I in [Respondent] while Group I in Local Union 551."

On May 19, 1989, Finn signed book I in Local 551 and, the following day, signed book II in Local 6. Finn testified that he later asked Local 551's official Clarey for a letter stating that he was no longer eligible for group I in Local 551 so that he could qualify for Local 6's group I. Finn testified that Clarey told him he did not want to provide such a letter noting that if one member left in such circumstances, "half the local would leave, because there just hasn't been enough work there."

Finn continued to use Local 551's out-of-work list signing book I on March 16, 1990. On that same day Clarey provided him the requested letter stating he was no longer eligible for Local 551's group I. This letter was sent to Local 6 and, on March 26, 1990, Finn was registered as group I in Local 6.

#### 6. Lee Naranjo

Lee Naranjo has been a longtime member of Local 59 of the International Brotherhood of Electrical Workers located in Dallas, Texas. His last use of Local 59's hiring hall was on March 6, 1987, and his last employment under Local 59's contract was in January and February 1987.

Soon thereafter Naranjo moved to Walnut Creek, Contra Costa County, California. He registered on book II of Local 6's out-of-work list and was dispatched in June 1987. On October 10, 1990, Naranjo was laid off after a substantial period of employment under Local 6's contract. He went to Local 6's office and sought to register on the out-of-work list. He filled out a current questionnaire and was placed on book II. The following day Naranjo submitted a letter to Local 6 reciting that he was qualified for Local 6's book I and requesting to be so classified. The letter specifically asserted he was "not Group I in my home local." That same day Naranjo called Local 59 and was told he was still on book I because all local members were kept on the books when they left town. Naranjo requested that his name be pulled from the register and was told the request must be in person or in writing. That same day Naranjo sent a letter requesting that his name be removed from Local 59's book I list.

On October 12, 1990, Glen wrote Naranjo denying his group I request. The letter stated:

After reviewing your records and confirming with your home local we find that you [are] presently registered on the highest referral group for which you qualify.

Naranjo went to Local 6's offices on October 15, 1990, and asked Conroy to explain the letter. Conroy told Naranjo the letter meant he would remain group II but referred Naranjo to Glen for further details. Naranjo then asked Glen why his application was rejected. Glen said he did not know since he did not have Naranjo's records before him. When Naranjo continued Glen told him to appeal the decision.

On October 16, 1990, Naranjo filed an appeal. On October 17, 1990, Local 6 received a letter from Local 59's business manager asserting that "Naranjo . . . is not signed on our Group I books." The following day Glen wrote Naranjo. The letter stated in part:

We have also received notification from Local Union 59 to the effect that you are eligible to register on Group I in that local.

As you are aware our Referral Appeal Committee will not place you on Group I so long as you are eligible to register Group I in another local.

Naranjo appealed this determination on October 22, 1990. He also obtained a copy of the relevant Local 59 agreement. Naranjo attended the November 28, 1990 referral appeal committee meeting. Glen reported that Local 59 officials said Naranjo was eligible to sign Local 59's book I. Naranjo said

he was not eligible to sign group I in Local 59 because he did not meet the contractual requirements of residency nor minimum qualifying hours under the contract. He provided the Local 59 contract to corroborate his assertions. Naranjo testified that Glen said:

there was a difference between being registered and being eligible. . . . And he also said it wasn't fair for his members that I could go to Dallas and sign Book I anytime.

Glen told Naranjo that he needed a letter from Local 59 stating that he was not eligible and that "it seems like my argument should be with Local 59 instead of Local 6." The committee denied Naranjo's appeal.

Naranjo telephoned Local 59 the following day seeking a letter declaring him ineligible to register on Local 59's book I. Numerous calls and letters proved unavailing over a period extending into January 1991.

Naranjo was registered on Local 6's book II in February 3, 1991. He filed his unfair labor practice charge in mid-March 1990 and was placed on Local 6's book I on March 28, 1991.

#### IV. ANALYSIS AND CONCLUSIONS

##### A. *The Arguments of the Parties*

Grossly simplifying a much more complicated collection of arguments which will be considered in greater detail, *infra*, the Charging Parties' arguments may be broken down into three broad categories with additional disputes respecting the breadth of any directed remedy.

First, the General Counsel attacks Local 6's hiring hall operations in two ways arguing that Local 6 has applied an invalid and illegal "eligibility" rule to prevent travelers from obtaining group I status to which they would otherwise be entitled. There is no dispute that the rule under attack provides that referral applicants are not eligible for group I status in Local 6 if they are eligible for group I status in any other International Brotherhood of Electrical Workers' local. There is also no dispute that Local 6 has enforced the rule against travelers. Respondent argues that its rule is permitted under the Act as an objective and nondiscriminatory rule which is reasonable and proper given the legitimate needs of unions operating hiring halls within the construction industry as illustrated in part by Section 8(f) of the Act and its legislative history.

Second, the General Counsel argues that Respondent is generally obligated to make reasonable efforts to inform its hiring hall users of the applicable rules, procedures, and interpretations of hiring hall rules so that the hiring hall users may take informed actions and make informed choices in utilizing the hiring hall process. The General Counsel alleges that Local 6 has refused to answer hiring hall users' specific requests for information respecting such information and has generally refused to give hiring hall users explanations for either Local 6's or the referral appeal committee's refusals to place them on group I.

The General Counsel further argues that Respondent has willfully failed and refused to inform travelers of several important rules: (1) the rule that hiring hall users may not be actually registered on any other local's book I, if they seek

group I status with Local 6; (2) the referral appeal committee rule denying standing to appeal adverse registration determinations to any individual employed in the unit on the day the appeal is heard and, finally; (3) assuming that the rule is not stricken as invalid as a matter of law as argued *supra*, the rule which denies group I status in Local 6 to any individual eligible to sign book I in any other local.

Local 6 challenges the arguments of the General Counsel and the Charging Parties respecting these allegations in several ways. Initially Respondent denies that there is a legal obligation on the part of a labor organization operating a hiring hall to inform users of any rules other than recent changes—i.e., changes made within the past 6 months—in existing rules. Respondent then argues that the rules under attack here are longstanding rules concerning which there is therefore no obligation to make any efforts, reasonable or otherwise, to disclose them to users. Further, Respondent argues the rules at issue were posted in the hiring hall earlier than the General Counsel admits and were also otherwise well known by the hiring hall users involved herein.

Third, the General Counsel asserts that Respondent's agent made certain statements to hiring hall users which violated Section 8(b)(1)(A) of the Act. Respondent contests the occurrence of the alleged threats and further argues the conduct, even if found, does not rise to the level of a violation of the Act.

Finally, the General Counsel generally contends that Respondent's actions alleged to violate Section 8(b)(2) of the Act here also caused various individuals and groups of individuals using the hiring hall who were denied book I registration to miss employment opportunities. As an illustration, the General Counsel urges as a finding be made that all appeals improperly denied by the referral appeal committee were proper and would have been granted but for Respondent's wrongful application of the challenged rules and that accordingly a make-whole remedy should lie in each case. Respondent argues for a far more limited remedy and, assuming for the purposes of argument that violations are to be found, asserts that generally travelers did not suffer employment loss and that, in any event, no broad remedy and, in particular, no monetary relief should be directed.

##### B. *Basic Law Applying to Hiring Halls*

Any consideration of current hiring hall law must start with an understanding of the evolution of that law under the Act. The Act initially allowed the operation of closed shops until the passage of the Taft-Hartley Act in 1947. The Board in *Mountain Pacific Chapter*, 119 NLRB 883 (1957), held that hiring hall agreements were illegal per se and established a variety of requirements for their operation.

The Supreme Court rejected the Board's view in *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961). It also discussed in some detail the Board's fashioning of a model hiring hall in *Mountain Pacific*, *supra*. Justice Douglas writing for the majority stated at 671-672:

The Board went on to say that a hiring-hall arrangement to be lawful must contain protective provisions. Its views were stated as follows:

We believe, however, that the inherent and unlawful encouragement of union membership that stems from

unfettered encouragement of union membership that stems from unfettered union control over the hiring process would be negated, and we would find an agreement to be nondiscriminatory on its face, only if the agreement provided that:

(1) Section of applicants for referral to jobs shall be on a non-discriminatory basis.

(2) The employer retains the right to reject any job applicant referred by the union.

(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement. [119 NLRB 883, 897.]

The Court rejected the Board's minimum content hiring hall provisions. Justice Douglas noted at 666-677:

It may be that hiring halls need more regulation than the Act presently affords. As we have seen, the Act aims at every practice, act, source or institution which in fact is used to encourage and discourage union membership by discrimination in regard to hire or tenure, term or condition of employment. Perhaps the conditions which the Board attaches to hiring hall arrangements will in time appeal to the Congress. Yet where Congress has adopted a selective system for dealing with evils, the Board is confined to that system. [*NLRB v. Drivers Local Union*, 362 U.S. 274, 284-290 [(1960)]. Where, as here, Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme.

Moreover, the hiring hall, under the law as it stands, is a matter of negotiation between the parties. The Board has no power to compel directly or indirectly that the hiring hall be included or excluded in collective agreements. Cf. [*NLRB v. American Ins. Co.*, 343 U.S. 395, 404. Its power, so far as here relevant, is restricted to the elimination of discrimination. Since the present agreement contains such a prohibition, the Board is confined to determining whether discrimination has in fact been practiced. If hiring halls are to be subjected to regulation that is less selective and more pervasive, Congress not the Board is the agency to do it.

The Court's holding, however, has not prevented continuing restriction and regulation of the hiring hall process. Thus it has been noted: "As a practical matter, the presumption of legality accorded hiring-hall referral systems is far more limited than a reading of *Teamsters Local 357*, [supra,] might indicate." (The Developing Labor Law, Second Edition 1983, Morris Ed., 1397.)

The Board has since held that a union's power in the hiring hall setting is so great that any union action which prevents an employer's hire of an applicant will be presumed to encourage union membership in violation of the Act. The presumption of impropriety may be rebutted by the union's demonstration that fair and regular utilization of valid hiring

hall regulations were used to determine the order of dispatch of job registrants. *Carpenters Local 25 (Mocon Corp.)*, 270 NLRB 623, 630 (1984), enfd. 769 F.2d 574 (9th Cir. 1985).

The Board explicitly holds that a union operating an exclusive hiring hall has a duty to apply lawful contractual provisions in administering the system and that a failure to do so may result in a violation of Section 8(b)(1)(A) and (2) in appropriate situations even in the absence of a finding of specific discriminatory intent. *Electrical Workers IBEW Local 211 (Atlantic Division NECA)*, 280 NLRB 85, 87 (1980), enfd. 821 F.2d 206 (3d Cir. 1987); *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424 (1984), enfd. 772 F.2d 571 (9th Cir. 1985).

The union operating a hiring hall owes referral applicants a duty of fair representation and is obligated to operate the hiring hall in a manner free from any arbitrary or invidious considerations. *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898 (1985). The Board in *Boilermakers Local 374 (Construction Engineering)*, 284 NLRB 1382, 1383 (1987), enfd. 852 F.2d 1353 (D.C. Cir. 1988), noted:

This code of acceptable conduct necessarily extends to the institution of any referral rules which the union adopts in accord with contractual provisions. In other words, the referral rules themselves, including any referral grievance mechanism, cannot be discriminatory or arbitrary. *Laborers Local 304 (AGC of California)*, 265 NLRB 602 (1982).

A union's obligations applies to all rules and procedures governing hiring hall operations. Such rules may not be arbitrarily or discriminatorily applied against individuals who are not members of the particular local union operating the hiring hall. *Electrical Workers IBEW Local 575 (Coleman Electric)*, 270 NLRB 66 (1984).

The Board does not require that hiring hall rules and procedures be written. *Laborers Local 394*, 247 NLRB 97 (1980); *Teamsters Local 174 (Totem Beverages)*, 226 NLRB 690, 700 (1976). Nor need referral rules, absent a contractual requirement, be posted or incorporated in a contract. *Iron Workers Local 505 (Snelson-Anvil)*, 275 NLRB 1113 (1985). Rather the Board requires, as noted supra, that contractual provisions and referral rules be followed and that objective criteria be utilized. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB 50 (1982). A union which operates a hiring hall without such objective criteria violates the Act. *Boilermakers Local 374 (Construction Engineering)*, 284 NLRB 1382 (1987).

Hiring hall rules may be changed by a union. *Electrical Workers IBEW Local 164 (NECA)*, 190 NLRB 196 (1971), affd. sub nom. *Bleier v. NLRB*, 457 F.2d 871 (3d Cir. 1972). Timely notice of such changes must be made of changes in hiring hall rules and practices to all hiring hall users. *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424 (1984), enfd. 772 F.2d 571 (9th Cir. 1985). Further a union is obligated to supply information about the hiring hall procedures and particular individuals' places on the registrar on request. *Electrical Workers IBEW Local 575 (Coleman Electric)*, supra; *Bartenders Local 165 (Nevada Resort Assn.)*, 261 NLRB 420 (1982); *Operating Engineers Local 324 (Michigan Chapter, AGC)*, 226 NLRB 587 (1976).

The Board goes further and finds a statutory obligation to “give applicants for employment adequate notice of its hiring hall procedures,” *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 426 (1984). The Board in *IBEW Local 11*, supra, held that the fact that there were no written rules respecting a requirement of a particular number of hours worked under the contract to qualify for group I and the fact that the requirement was not posted in the union’s hiring halls coupled with the failure of union officials to inform rejected group I registrants of the reason they failed to qualify for group I was arbitrary and a breach of the union’s duty to keep hiring hall applicants informed about matters critical to their employment status.

### C. Initial Matters

Respondent’s answer avers as affirmative defenses that the complaint is generally barred by the statute of limitations, that the original charge in Case 20–CB–7825 is ineffective to toll the statute of limitations, that the allegations of the complaint are barred for filing to exhaust administrative remedies, that the complaint includes claims not covered in the charges and, finally, that “[t]hese matters were finally resolved in arbitration by the Referral Appeals Panel. The NLRB must defer to these findings.”

Such assertions and arguments should properly be considered initially before the merits of individual complaint allegations are considered. Further the issue of the referral appeal committee’s status as an agent of Local 6 is also discussed below.

#### 1. The 10(b) defenses

##### a. Concerning Case 20–CB–7825

As noted supra, Berkowitz’ original charge filed on December 13, 1988, apparently as the result of a typographical error, named an earlier charge filer, Giertz, as the alleged discriminatee on the face of the charge. The charge was amended on September 19, 1990, to correct that error. Respondent argues that the amendment does not properly carry back to the date of the original charge and therefore the statutory 6-month limitation set forth in Section 10(b) of the Act must be calculated from the date of the filing of the amended charge rather than the original.

Were the amended charge the only charge at issue it is clear that no unfair labor practice could be found more than 6 months before its filing. *Bryan Mfg. Co. v. NLRB*, 362 U.S. 411 (1960). The General Counsel asserts three separate theories for using the filing date of the original charge.

First the General Counsel asserts that the incorrect name on the charge was an inadvertent error and was either not noticed or recognized as such by Respondent who responded in writing by letter dated December 27, 1988, during the investigation of the charge in conjunction with the earlier charge filed by Giertz by addressing the factual circumstances applicable to both Giertz and Berkowitz as set forth supra. Thus, argues the General Counsel, all parties acted at all material times as if the charge had named Berkowitz and thus there was no denial of due process to or other prejudice suffered by Respondent who well knew the precise charges raised against it. Further, notes the General Counsel, the Regional Director’s January 11, 1989 dismissal of Berkowitz’ charge

and its subsequent rescission each named Berkowitz as the alleged discriminatee at issue.

I accept the General Counsel’s factual argument. No party cited a case addressing the narrow question: where all parties at all relevant times act on the assumption, albeit mistaken, that the charge names the Charging Party, so that no prejudice occurs, are the requirements of Section 10(b) of the Act satisfied? I answer the question in the affirmative. Thus, I find that where, as here, there is no question that all parties operated at all relevant times under the assumption that a particular charge addressed the Charging Party rather than an inadvertently included and hence erroneously named other individual, the technical error of the omission of the correct name is of no legal consequence under Section 10(b) of the Act.

Put another way Section 10(b) here is satisfied by the understanding and actions of the parties. The case is not defeated by the technical omission of the Charging Party’s name on the charge filed in December 1988. The Board and court cases dealing with Section 10(b) of the Act sound in the language of equity dealing in terms of notice, due process and the provisions of timely opportunities for respondents to investigate and respond to allegations contained in charges and complaints. The doctrines of equity focus on issues of actual or real prejudice—matters not present in the instant case. The technical niceties of the law, one of which is admittedly abridged here, are not utilized by courts speaking in equity to deprive parties of substantive rights. Accordingly, I find Berkowitz’ original charge supports the allegations of the amended charge to the extent they were understood by the parties to have been a part of the original allegation. Thus, I sustain the General Counsel’s first argument that the original charge, given the facts found here, was sufficient to toll the running of Section 10(b) of the Act.

Counsel for the General Counsel’s second argument is based on the similar and related circumstances of the original charge and the amended charge which differ only in the name of the two individuals, each of whom attempted to register on book I with Respondent and felt wrongfully denied that opportunity, and to the other charges underlying the instant proceeding. Counsel for the General Counsel argues that even if her first theory fails, the amendment filed by Berkowitz acquires the filing date of the original charge for purposes of Section 10(b) of the Act as a “closely related charge” under the Board’s analysis in a line of cases including *Columbia Textile Services*, 293 NLRB 1034 (1989), and *Redd-I, Inc.*, 290 NLRB 1115 (1988). The General Counsel notes the mistakenly named Giertz and Berkowitz were making similar allegations, i.e., they were from the same home local and their situations were addressed by Respondent during the course of the investigation of the two charges in a common letter. Thus she argues that there is little question but that their two situations should be found related. Since the Board in such cases looks to the question of whether Respondent would have asserted the same defenses and preserved similar evidence, and since I have found that in fact Respondent construed the charge filed by Berkowitz to allege Berkowitz as a discriminatee, I also sustain the General Counsel’s theory here. Indeed even were the issue one of whether Berkowitz’ otherwise untimely charge amendment was related to Giertz’ charge, I would reach the same result.

Finally as a third independent theory, the General Counsel argues that Berkowitz' allegations may be addressed under the other charges. She argues Berkowitz would receive the same remedy under the other charges at issue here as he would under his own charges and that, accordingly, the 10(b) issue has no practical effect on the result to be reached herein.

Respondent does not separately challenge the assertion that other charges may provide certain remedies for Berkowitz. Respondent's assertion in its affirmative defense respecting Case 20-CB-7825 alleges the charge is limited to the 6-month period before the filing of the amended charge "except insofar as it was separately alleged in another charge and occurred within six-months of that other charge." The General Counsel's theory here would not extend her desired remedy beyond that 6-month limitation so there could under this theory be a "practical" difference in the relief granted assuming the original charge is insufficient to toll Section 10(b) of the Act and if conduct occurred for which the General Counsel seeks remedy more than 6 months before the filing of another sufficiently related charge here.

Given my finding that the original charge is sufficient to toll Section 10(b) of the Act and that the amended charge is sufficiently closely related to carry back to the original charge, the General Counsel's third theory need not be further addressed here. I find no defense to the allegations respecting Berkowitz under Section 10(b) of the Act on the facts here.

b. *Concerning the hiring hall rules and procedures*

Respondent argues that hiring hall and appeal committee rules in place more than 6 months before the filing of an applicable charge are beyond attack by virtue of Section 10(b) of the Act. The argument is, in effect, that if Local 6 has maintained a hiring hall rule or practice for more than 6 months, such rule by operation of Section 10(b) of the Act becomes invulnerable. The General Counsel concedes that the promulgation and maintenance of such rules beyond the statutory 10(b) period may not be attacked but that "the maintenance of an unlawful rule is a continuing violation. See *Teamsters Local 174 (Totem Beverages, Inc.)*, 226 NLRB 690, 701 (1976)," (G.C. Br. at 117). The cited case supports the proposition advanced.<sup>14</sup> I do not find therefore that any rule or practice however venerable is outside the reach of the General Counsel to the extent that enforcement of the rule or a failure to publicize it falls within the 10(b) period of a proper charge.

The General Counsel's primary attack on the hiring hall and appeal committee rules concerns Local 6's purported failure to give hiring hall users sufficient notice of the rules. Respondent's argument that there is no obligation to notify hiring hall users of rules and rule changes promulgated more than 6 months before the charge at issue is based at least in part on arguments respecting 10(b)'s limitation on the issuance of complaints. This argument is addressed in greater detail infra. For the reasons given and under the cases in that

<sup>14</sup>The General Counsel also argues that where a charging party has inadequate notice of a given rule, the 6-month period set forth in Sec. 10(b) of the Act does not begin to run against him. Given my findings above, it is unnecessary to determine if the doctrine of lack of notice would bear on the circumstances presented here.

analysis, particularly *Plumbers Local 230*, 293 NLRB 315 (1989), and the cases cited therein, I find the passage of time since a rule has been promulgated or changed does not relieve a union from notifying hiring hall users of the rule or the change in the rule under Section 10(b) of the Act.

2. Local 6's argument that there has been a failure to exhaust administrative remedies and that the matter should be deferred to the referral appeal committee

Respondent in its answer alleges as part of its affirmative defenses:

The charges are barred for failing to exhaust administrative remedies.

These matters were finally resolved in arbitration by the Referral Appeals Panel. The NLRB must defer to these findings.

The General Counsel on brief argues at 119-120:

Deferral to the decisions of the RAC is inappropriate because the charges have been filed by individuals, their interests clearly are adverse to those of Local 6, and no employer is a party to this proceeding. [Citations omitted.] Moreover, the Charging Parties are not required to exhaust administrative remedies, both because the Board will not defer to the RAC proceedings, see *Plumbers Local 392*, supra, 252 NLRB 417 n. 1, and because a hiring hall user who has been discriminated against by a union is not required to first resolve the matter through internal procedures. *Boilermakers Local 37*, supra, 272 at 330.

The General Counsel's reasoning and citations are persuasive. Respondent does not cite authority to the contrary. Based on the above, I find the charges are not barred by a failure to exhaust administrative remedies. I further decline to defer the matter to the decisions of the referral appeal committee—current or prospective.

3. The issue of the agency of the referral appeal committee

The referral appeal committee is a longstanding entity created under the collective-bargaining agreements between Local 6 and the employers to participate in the operation of the contractually created hiring hall process. The establishing documents are discussed supra.

Local 6 challenges the General Counsel's allegation that the committee is an agent of Local 6 asserting that Local 6 appoints but one member of three who serve on the committee, that the committee applies its own independent judgment to issues brought before it, frequently overturning prior union actions, and that Local 6 is contractually bound to implement the decisions of the committee.

The General Counsel notes that the committee members serve at the pleasure of the contracting parties and work to further the efficient operation of the hiring hall having no independent fiduciary duty to particular hiring hall users. The General Counsel argues that the Board has found similar entities agents of the union citing *Electrical Workers Local 3 (Ericsson Telecommunications)*, 257 NLRB 1358, 1370

(1981); *Plumbers Local 375 (Richard L. Osborn)*, 228 NLRB 1191, 1195 (1977).

Having considered the evidence and the argument, I agree with the General Counsel. Clearly, the referral appeal committee is an integral part of the hiring hall process. Both contracting unions and contracting employers are responsible for the proper operation of exclusive hiring halls established by contract. Thus both Local 6 and the employers are responsible for the actions of the referral appeal committee as they are responsible for the other agents who operate the hiring hall. It is immaterial to the instant case that the referral appeal committee may also be an agent of the employers. An employer need not be joined with a union in the prosecution of an unfair labor practice respecting a union's responsibility for hiring hall events.

Here the committee has no role save that established by the parties under the contract of participating in the hiring hall process. The committee has therefore been operating as an agent of Local 6 at all times material. The parties in creating the committee have, as a matter of law, delegated certain authority to the committee. Local 6, however, may not in so doing relieve itself of responsibility for the committee's actions. I find, therefore, that the committee is an agent of Local 6 as alleged by the General Counsel.

*D. The General Counsel's Contention that Respondent's Eligibility Rule is Invalid and Illegal*

The General Counsel in paragraph 9(b)(1) of the complaint alleges that Respondent's "maintaining and enforcing" of the eligibility rule violates Section 8(b)(1)(A) and (2) of the Act. The General Counsel pleads the violation in the alternative as commencing on either June 14, 1988, or March 21, 1989, and continuing to date.<sup>15</sup>

The General Counsel's contention is, in essence, that the rule is arbitrary and discriminatory under the cases cited supra. To evaluate the General Counsel's direct attack on Respondent's eligibility rule, it is appropriate to consider initially the actual application of the rule in practice, then the arguments of the parties in greater detail and, finally, the validity of the rule under the Act.

1. The eligibility rule's effect on Local 6's hiring hall users

*a. The significance of book I registration*

Hiring hall dispatch is generally accomplished by receiving employer requests for job applicants and giving those opportunities, referred to as dispatches, to hiring hall users who have registered a desire to accept employment. The IBEW generally and Local 6 in particular utilizes the priority groupings described in the contract quoted supra. All group I or book I registrants receive priority, whensoever registered, over book II and so forth. In times of relative scarcity of employment, registration on books other than book I may well simply not provide any opportunity for employment at all for long periods of time. Obtaining the right to sign book I is, therefore, a very significant matter which fre-

quently means the difference between a hiring hall user obtaining work or not working.

*b. To whom the eligibility rule applies*

Local 6's eligibility rule denies a Local 6 hiring hall registrant the right to sign Local 6's book I, if the registrant is eligible to sign book I in any other IBEW Local. Initially it is obvious that the rule has no effect on individuals who have not ever been eligible for book I at other Locals. The rule as applied and enforced on this record suggests further that the "other local" of the rule is in fact the "home local" of the hiring hall registrant. Thus for example, the memorandum of understanding and the questionnaires which address the practical requirements for meeting the eligibility specifically require evidence or information respecting only the registrant's status at his or her home local. Thus the eligibility rule applies only to travelers and not to members of Local 6.<sup>16</sup> Since the eligibility rule only prevents group I registration on Local 6's books and has no other effect, the rule has no favorable aspects from a traveler's perspective. The rule thus applies only to travelers and can only harm them rather than help them. The rule thus clearly distinguishes between travelers and Local 6 members by assigning additional requirements to travelers not assigned to Local 6 members.

*c. How the eligibility for book I at other locals is determined*

(1) Written rules

The eligibility rule operates based on an eligibility determination made by other IBEW Locals and communicated by means of a letter or telephonic statement from the business manager of the relevant local. A registrant's book I eligibility is based on the specific circumstances of the registrant and the standard applied by the particular local. It is necessary therefore, in order to understand how Local 6's eligibility rule operates in practice, to determine how other IBEW Local unions operating hiring halls determine their own book I eligibility.

In furtherance of that proposition the General Counsel entered into the record contracts between various local unions of the International Brotherhood of Electrical Workers Union, AFL-CIO and employers that establish hiring halls which contain group I eligibility requirements as well as standard or canned contractual or hiring hall language the International mandates its locals to use. As a general proposition IBEW locals maintain exclusive hiring halls for the dispatch of inside wiremen to signatory employers. Further the locals, like Local 6, classify referents on the basis of residency and hours worked under the contract with a requirement of 1 year of experience under the contract in the past 4 calendar years. Permanent residency in the local area is also a requirement for group I status. The evidence did not

<sup>15</sup>The earlier date derives from the 6-month period preceding Charging Party Berkowitz' December 13, 1988 charge found infra to be valid to toll Sec. 10(b) of the Act. Based on that earlier finding I consider the allegation from June 14, 1988.

<sup>16</sup>There was no suggestion that any Local 6 member was ever asked if he or she was eligible for book I at any other IBEW Local. Nor was it ever suggested that, if such a situation were discovered by Local 6, such a member would not be able under the eligibility rule to register on book I in Local 6.

suggest that any other local had an eligibility rule of the type at issue here.<sup>17</sup>

## (2) Application of rules to the Charging Parties

As may be seen from the situations of certain of the Charging Parties and from a general consideration of the effect of such eligibility formulae, an individual working full time at the trade in his or her home local for a period of years would likely have many more hours under the appropriate contract than the 1 year's amount necessary to qualify for book I. Further, if, by working in essence full time, the hiring hall user amasses 1 year of experience each year worked in the area, that user would meet the hours worked under the contract requirement for a period of up to 3 years following complete cessation of work under the contract.

Thus, as was the case with some Charging Parties here, a full year's employment preserves group I eligibility in the locals where those hours were worked for 3 more years. An individual who in such circumstances abandoned employment in, for example, Florida or Texas, and permanently moved to the San Francisco Bay Area would remain "Book I eligible" in Florida or Texas for 3 more years. Since journeymen or women in skilled trades such as electricians tend to continuously work at the trade when employed, it is reasonable to conclude that a bulk of travelers moving from one hiring hall jurisdiction to another would have worked a sufficient number of hour under their home local contracts to remain "Book I eligible" for a period of years after their move. These individuals are the ones who lose book I eligibility with Local 6 under the eligibility rule.

The above description addressing the status of individuals under an application of the "home local's" rules were received into evidence. The status of travelers in their home locals is not determined by Local 6, however, based on an objective analysis of the home local's contract's language. Local 6 explicitly—by both the language of their written rules and the consistent practice revealed by the record—takes the word of the other IBEW locals respecting the "Book I eligibility" of Local 6 hiring hall group I traveler applicants. What the other locals tell Local 6 is controlling. The traveler must deal with the other local, not Local 6, if he or she is unhappy with the other local's report on his or her book I status.

This practice means that the written requirement for book I eligibility at other locals is not all that matters. The actual practices of other locals—or at least the practices as they re-

<sup>17</sup>The General Counsel argues that the fact other locals do not have an eligibility rule and that the IBEW does not require the eligibility rule as part of its "standard" hiring hall rules support her arguments attacking the rule here. While it might be true that a local union's good faith in enacting a given hiring hall rule might be supported by the proposition that it was required to do so because of International union requirements or that it was a commonly applied rule, the converse is not true. The bare fact that a local has more restrictive rules respecting travelers than its sister locals or its International provides does not persuasively auger that bad faith or discriminatory intent is involved.

Further, since not all IBEW locals' rules were put into evidence, it is not clear that Local 6's eligibility rule is unique either within the locals of the International Union of Electrical Workers, AFL-CIO or within the world of construction union hiring halls in the country generally.

port them to Local 6, irrespective of the written rules—is of critical importance to the traveler registering for book I with Local 6. This difference is not simply academic. Record evidence respecting the Charging Parties suggested that home locals, in effect, presumed that their local members qualified for book I at all times irrespective of what was required by the contract. The experiences of the Charging Parties, described supra, illustrate various situations in which locals either presume eligibility or explicitly retain it for local members. Those experiences also demonstrate the difficulty travelers may encounter in having their ineligibility to register on book I at their home local first admitted by their home local officers and, second, communicated to Local 6.

## 2. The arguments of the parties

Respondent argues strenuously that the eligibility rule is a permissible perhaps even laudable rule necessary and proper to insure that Local 6 and its contracting employers have a ready supply of trained employees available for dispatch. This is accomplished, argues counsel for Local 6, in the time honored manner of insuring that priority of dispatch and hence employment is given to permanent local residents who are committed to the trade and the area and are therefore more likely to consistently serve the needs of local industry over the long term. Respondent adduced credible evidence that Local 6 and its contracting employers expend considerable effort training a skilled and dedicated local work force whose presence, skills, and commitment to the trade would be difficult to sustain absent an ability to provide regular employment opportunities.

Respondent argues further, that absent such priority in dispatching, the available work would be spread among a wider group of individuals with less work for each person. The result would be insufficient work to provide a full-time employment or to hold skilled individuals in the trade or in the area in slow times and therefore heightened shortages of skilled workers in good times. In each situation the industry would not be well served.

Respondent argues that the above noted realities of skilled trades dispatching in the construction industry have been reflected in the nation's labor laws. Respondent argues the Act as illustrated in its legislative history with particular reference to Section 8(f)(4) of the Act, specifically permits efforts by employers and unions to discriminate in dispatch on the basis of residence.

Counsel for Respondent at hearing and on brief argues that Respondent has done no more in establishing the rules under attack here that is necessary and proper under the Act. More specifically, Respondent argues that travelers from out-of-area locals who are eligible to return to their home locals at any time and resume employment utilizing the favored group I dispatch priority may properly be treated less favorably than individuals who have no eligibility to obtain favored dispatch in other areas. Members of in-area locals of the IBEW who have group I eligibility therein, argues Respondent, are in even more favored circumstances and need not even change residence to obtain priority dispatch out of their home locals. These individuals, too, may properly be treated less favorably than those who may not obtain book I priority at other locals.

Respondent notes the General Counsel is not attacking Local 6's rule that a registrant may not be registered on book

I in any other local and simultaneously register on Local 6's book I. Yet, argues Local 6, the broader provisions of the eligibility rule are equally necessary as a practical matter to insure that the system works as intended and serve the same legitimate purposes. Each rule simply seeks to insure that priority of dispatch goes to local residents who will turn first to Local 6's employers in obtaining employment.

Respondent points out that the eligibility rule is a necessary part of the regulatory scheme and without it the hiring hall could not be operated in accord with the remaining rules. Thus, without the eligibility rule, persons could easily defeat the priority system generally and the registration rule in particular by initially signing book I at Local 6 and immediately thereafter signing book I at another local. The eligibility rule acts to deny Local 6 book I registration to those individuals who, because of the fact that they are eligible to immediately register on book I at another local, have the greatest opportunity to register on book I in two locals in violation of the registration rule—which conduct, the General Counsel concedes, Local 6 may legitimately act to prevent by means of the registration rule. Given the dangers of abuse and the practical difficulties of policing the activities of Local 6 hiring hall users at other hiring halls, argues Respondent, the eligibility rule is a necessary and at the very least permissible mechanism for insuring that standards of hiring hall regulation and control are maintained.

The General Counsel responds to Local 6's arguments by contending that the question of favoring local residents is not a true issue in the case, but is rather a pretext used by Respondent to cloak its true motive for the eligibility rule in issue, i.e., denial of book I job priority to anyone who is not a member of Local 6, i.e., travelers, irrespective of their local residence.

Counsel for the General Counsel asserts the Government is not challenging legitimate efforts by Local 6 to restrict the favored class of out-of-work list registrants—those allowed to register on book I—to individuals willing to limit their book I registration on out-of-work lists to those of Local 6 alone. Thus counsel for the General Counsel emphasizes she is not attacking the validity of the registration rule maintained by Local 6 which explicitly limits Local 6 group I registrants to those who are not registered on any other group I out-of-work list.

The General Counsel asserts that the eligibility rule which limits group I registration to those not currently eligible to sign book I in any other IBEW local goes far beyond any legitimate restriction designed to protect the registration rule or other goal permitted under the Act. Thus counsel for the General Counsel argues that the eligibility rule in practice acts to disenfranchise most, if not all, travelers for 3 years after they leave their home local and come to the San Francisco Bay Area.

The General Counsel's arguments are in part based on consideration of eligibility in the abstract. Travelers may establish permanent residence within Local 6's permitted area and work a qualifying number of hours under Local 6 contracts within 1 year of coming to the area. But for the eligibility rule, such travelers would be eligible along with Local 6 members to sign book I. And rightly so, argues the General Counsel, for they would then meet all the legitimate prerequisites for such registration.

The eligibility rule, which acts to disenfranchise such travelers based, not on current or future intentions or commitments, but on previous employment occurring up to 3 years past, broadly prohibits such individuals from signing book I. The General Counsel argues the only justifying rationale offered by Local 6 is the assertion that those who are able to register on book I at other locals will do and cannot be prevented from doing so, therefore, all who have such a capacity must be denied group I registration rights at Local 6. The General Counsel argues the relationship between the potential harm—multiple group I registration—and the cure—the denial of book I registration rights to all travelers eligible to register on book I at any other local—is too attenuated to pass logical muster. Thus argues the General Counsel, the eligibility rule is fatally arbitrary.

Given the obvious fact that most travelers who seek to register with group I in Local 6 are probably eligible to register book I in another local,<sup>18</sup> it is clear that the eligibility rule's practical effect is to prevent travelers from being able to register book I at Local 6 for a period of years. Thus the rule delays travelers from appearing on book I in competition with Local 6 members and, by discouraging travelers who see no quick means of obtaining book I registration from persevering in the area, limits the numbers who ultimately will become eligible for book I at Local 6 when their eligibility for group I at other locals expires through the passage of time.

The General Counsel argues further that in many cases the time that a traveler may have to wait until his or her book I eligibility in his or her home local expires is either longer than the relevant home local hiring hall rules require or is simply unlimited. As discussed above, the General Counsel notes the contractual standards for eligibility to register on book I at other locals are stretched, extended, or simply not applied to home local members with the result that it is even more difficult for travelers to lose their eligibility to register at their home locals or at least to get such a loss of eligibility reported by their home local to Local 6 as the eligibility rule requires. The result is it may take much longer or actually be impossible for some travelers to ever obtain eligibility to register on book I at Local 6 under the terms of the eligibility rule as applied by Local 6.

Respondent argues that disputes respecting the book I classification determinations of other locals are properly laid at their door and that the fundamental need of Local 6 to restrict parties who are eligible to register on book I at other locals, irrespective of the contractual propriety of the book I eligibility established by the other locals, remains the same.

The General Counsel further argues that the eligibility rule—unlike the registration rule—operates in a manner which denies hiring hall users the opportunity to elect which hiring hall to use for a period of years. Thus, a potential referent under the registration rule may decide which hiring hall he or she will sign book I on. No such election is pos-

<sup>18</sup>The General Counsel notes that with respect to the individuals whose home locals are those located within Local 6's geographical area: "[d]ue to the close proximity of the San Francisco Bay Area counties, it would not be difficult for [such] travelers applying for Local 6's Group I to have worked more than one year in the prior four years under both a Local 6 and another IBEW local union's agreement." Outside the area travelers would also be highly likely to be "Book I eligible" in their home local.

sible for a traveler eligible for book I in his or her home local. That individual must refrain from working under the home local contract for a sufficient time—a period of years—to even become eligible to register on Local 6's book I. An individual with no intention or desire to work other than out of Local 6's hall has no way of accelerating the multiyear process of becoming eligible to register on Local 6's book I.

Finally, the General Counsel argues that Local 6's eligibility rule is discriminatorily motivated. The General Counsel argues that the actions of Local 6 in keeping its rules and procedures hidden from travelers, its conduct respecting the Charging Parties here, the manner in which Local 6 obtains information from other locals for purposes of making eligibility rule determinations and Local 6's entire course of conduct here—all combine to support a finding that Local 6 has consistently demonstrated an antitraveler discriminatory motive in establishing and applying its rules respecting the operation of its hiring hall including its enactment and enforcement of the eligibility rule during relevant periods.

### 3. The eligibility rule's facial validity

As discussed *supra*, hiring hall rules and regulations must be based on objective criteria and must not discriminate based on union membership. While Local 6 argued at length that residency and its practical aspect here—the prevention of multibook I hiring hall registration—are legitimate objective factors which may be utilized in distinguishing between dispatch groups, the General Counsel from the outset of the case did not dispute that contention. Thus, the General Counsel concedes the legality of Local 6's registration rule as a legitimate means of insuring a proper concentration of work opportunities among those regularly using Local 6's hiring hall through the prevention of multigroup I registrations.

All Respondent's rules which limit Local 6 book I registration rights based on either registration or eligibility to register on book I at other local hiring halls act to limit only the rights of those who have used more than one hiring hall—travelers. Thus the registration rule acts to disenfranchise only those seeking to register on Respondent's book I who are registered on another local's book I. The General Counsel concedes the legitimacy of this rule even though it acts to disenfranchise travelers only. This is so because the rule is objective, directly related to the prevention of multi-hiring hall use—a permissible goal of Respondent, and because its resulting “punishment” is closely related to the goal of the rule and may be avoided by travelers through the simple expediency of not registering on book I at any other local.

Respondent argues the eligibility rule is equally grounded in Local 6's legitimate desire to limit multigroup I hiring hall use and is therefore, like the registration rule, permissible under the Act. The General Counsel argues the rule goes beyond the narrow focus of the registration rule and denies group I registration to many travelers who meet every legitimate requirement Local 6 has maintained for registration on book I.

There is no underlying factual dispute concerning to whom and in what manner the eligibility rule applies. The General Counsel argues that the eligibility rule acts to deny group I registration rights to otherwise qualified individuals who are disenfranchised solely because of their continuing eligibility

to register on book I at other IBEW locals—an eligibility which they cannot relinquish and which arose as a result of employment occurring before and often long before the traveler moved to Local 6's jurisdiction. The General Counsel argues that the rule as so broadly applied is arbitrary and discriminatory.

Local 6 argues that such ineligibility is a necessary consequence of its legitimate efforts to restrict multibook I registration, a goal conceded to be legitimate by the General Counsel in her acceptance of the registration rule's facial validity. The General Counsel replies that the rule acts too broadly and punishes not multiple book I hiring hall out-of-work registration but rather simply traveler status.

The eligibility rule as applied by Local 6 as set forth above clearly acts to prevent individuals from registering on Local 6's book I solely on the basis of their potential opportunity to register on other local's book I out-of-work lists. In other words, the eligibility rule operates to disenfranchise any individual who has the theoretical opportunity to violate the registration rule. Thus, the registration rule denies Local 6 book I registration rights to anyone who registers on book I in any other local; the eligibility rule denies Local 6 book I registration rights to any and all who are eligible to sign any other local's book I. The registration rule bars individuals who take a prohibited action—multiple book I registration. The eligibility rule bars those who are simply able to multiply register on book I irrespective of their actual actions or intentions. The registration rule punishes conduct. The eligibility rule punishes status.

Local 6's eligibility rule operates far more broadly than the registration rule to prevent book I registration of potential rather than actual multibook I hiring hall registrants. The rule operates to prevent the book I registration of individuals who meet all contractual requirements for book I status and who have taken no action inconsistent with book I status save for earlier employment under a collective-bargaining agreement of a separate IBEW Local. Thus individuals who otherwise fully qualify may have to endure years of ineligibility for book I registration without ever having demonstrated other than complete dedication to exclusive use of Local 6's hiring hall's group I classification.

The eligibility rule without doubt disenfranchises a large class of individuals for a substantial period of time and, perhaps as a result of the delay, probably permanently discourages others from achieving group I registration rights at Local 6. Respondent generally asserts that this is necessary to protect against multiple group I registration. There is no evidence that alternative means of achieving the same ends have been realistically considered or attempted by Local 6 or that such alternatives could not be successful in either limiting multiple group I registration or, in the alternative, limiting the group disenfranchised by the rule.

Given the very broad brush which the eligibility rule applies in disqualifying book I potential registrants without a persuasive demonstration of necessity and, further, the burden a union bears under the cited cases in establishing the legitimacy of rules which cause hiring hall users to miss employment opportunities,<sup>19</sup> Respondent has a heavy burden to

<sup>19</sup> There is no doubt the General Counsel adduced specific credible evidence supporting the proposition, and I find that registration on book I as compared to registration on lower priority books virtually

justify its use of the eligibility rule. Respondent advances the rule as legitimate because it is necessary to prevent abuse of the hiring hall system and violation of the registration rule. Even were this a legally possible defense, Respondent did not show that application of the eligibility rule, as opposed to the sole use of the registration rule or alternative means or controlling multiple registration, is necessary to meet the stated objective.

Not only do I find the factual justification of Local 6 for the eligibility rule to be inadequate, I further find that no factual justification will successfully lie to sustain a rule which is so broad and overreaching in its disenfranchisement of otherwise qualified hiring hall registrants. The rule's disqualification of registrants simply due to their prior employment—often for a period of years—is simply unreasonable, arbitrary, and discriminatory. This is particularly true where the punishment—denial of book I status—under the eligibility rule results from the simple potential to be a multi hiring hall book I registrar. Those individuals who are potentially multiple hiring hall users are never Local 6 members and are virtually always travelers. The operation of the eligibility rule thus acts rigorously to deny travelers book I status at Local 6 for years. Such harm may not be justified on the basis that the eligibility rule assists in achieving compliance with the registration rule.

Given all the above, and in agreement with the General Counsel, I find that Respondent's maintenance and application of the eligibility rule to prevent otherwise qualified individuals from signing book I was arbitrary and discriminatory and in violation of Section 8(b)(1)(A) and (2) of the Act.

#### 4. Local 6's eligibility rule as part of an alleged pattern of discriminatorily motivated conduct

The General Counsel has alleged that the eligibility rule, even if facially valid, is invalid as part of a course of conduct by Respondent to prevent, discourage, and retard travelers' use of the hiring hall's book I because they are not members of Local 6. Thus the General Counsel argues the rule is one part of a campaign by Local 6 to illegally preserve work opportunities for Local 6 members by discriminatorily denying book I registration and hence jobs to travelers and must be judged in that context.

Inasmuch as I have found the eligibility rule on its face violates the Act, it is unnecessary to make further findings respecting this additional contention. Reviewing authority may differ however with my findings respecting the facial invalidity of the eligibility rule. Accordingly, and in order to avoid, if possible, a time consuming remand, I make the following additional findings respecting this allegation of the General Counsel.

Assuming that Respondent's eligibility rule is facially valid, did Respondent violate the Act by enforcing the rule when considered in the context of the case as a whole. I conclude that it did. I agree with the contention of the General Counsel because my individual findings with respect to individual allegations of the complaint, when considered as a whole, support the further finding, which I make here, that Respondent has at relevant times operated its hiring hall operation in a manner clearly designed to prevent or at least

without exception results in accelerated dispatch to employment opportunities.

discourage and delay travelers from successfully registering on Local 6's group I out-of-work list.

Thus, I find the pattern and practice of manipulation of the hiring hall registration system to discriminate against travelers, alleged by the General Counsel, is sustained by the evidence. I make this finding based on the following findings most of which are discussed in much greater detail infra: (1) Local 6's practice of keeping hiring hall rules and regulations related to travelers quiet and undissemated; (2) the regular pattern of refusing to answer meaningfully the inquiries of travelers respecting rules of the hiring hall or concerning their own claim's status; (3) the obscurant, obfuscating, and often dilatory manner in which all aspects of the travelers' inquiry, registration, and appeal process was handled by Local 6 and, finally; (4) the statements made by Respondent's agent to a Charging Party.

In making this finding I am quite aware of the Supreme Court's strong admonition, cited supra in *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 672 (1961), that the Board should not substitute its judgment for the contracting parties respecting the operation of a hiring hall but should confine itself to determining if acts of discrimination have occurred. I am also well aware that unions that operate hiring halls are not obligated to maintain large staffs of clericals and investigators who may be expected to act omnisciently respecting every hiring hall inquiry or situation.

Even a cursory examination of Local 6's handling of the attempts of the Charging Parties to obtain information and to perfect and advance their claims does not reveal the acts and omissions of a benign, but perhaps overworked, union staff. Rather what stands revealed is a pattern of conduct including clever, indeed disingenuous, withholding of information and manipulation of the registration rules combined with general obfuscation and delay designed to confuse, bewilder, and retard the efforts of the Charging Parties to obtain sufficient information to better understand the registration system's requirements, to make or advance their claims, to obtain reconsideration of their claims or to obtain effective review at the referral appeal committee level of the Local 6's denial of their requests to register on book I. In such a context and given such a discriminatory motivation even an otherwise benign, uniformly applied, rule may be used in such a manner as to violate the Act. Were the eligibility rule otherwise valid, Respondent would have violated the Act by applying the rule to the Charging Parties here in a manner calculated to discriminate against them because they were travelers and not members of Local 6. Such conduct would violate Section 8(b)(1)(A) and (2) of the Act.<sup>20</sup>

#### 5. Summary and conclusion respecting the eligibility rule

I have found above that Respondent's eligibility rule operates unfairly and discriminatorily to deprive travelers of employment opportunities arising from registration on Local 6's book I out-of-work list. I have found therefore that the eligibility rule is arbitrary, discriminatory, and illegal irrespective

<sup>20</sup> Because the General Counsel specifically declined to challenge the existence and application of the registration and referral appeal committee standing rules, discussed elsewhere in this decision, I do not consider them to be under attack, setting aside the information arguments discussed infra, under any theory of the General Counsel.

of the motive behind its institution and maintenance by Local 6.

I have also found, however, that the eligibility rule is part of a pattern of conduct by Local 6 which is designed to and has succeeded in delaying and denying work opportunities to travelers using Local 6's hiring hall because those individuals were not members of Local 6. Therefore, I would also find Local 6's maintenance and application of the eligibility rule to travelers a violation of the Act even if it were not, independently and in isolation, invalid under the Act.

I have further found that Local 6 has utilized the eligibility rule to deny certain of the Charging Parties and other travelers book I registration rights during the periods alleged in the complaint. Thus, Respondent caused and attempted to cause the Charging Parties and other travelers to lose employment opportunities which would have resulted from registration in a more favorable dispatching category and concomitant speedier dispatch.

Local 6's conduct as found above violates Section 8(b)(1)(A) and (2) of the Act. Questions of remedy are discussed in the remedy section of this decision, *infra*.

*E. Allegations Local 6 Violated Section 8(b)(1)(A) of the Act when It Failed and Refused to Provide Requested Information to Hiring Hall Users Respecting Hiring Hall Rules and Procedures*

In paragraph 9(a)(4) of the complaint, the General Counsel alleges that Respondent refused "upon request" hiring hall users of the requirements for attaining group I status. Other paragraphs<sup>21</sup> allege Respondent failed to provide various information without reference to whether that information was specifically requested by the individuals involved. For ease of understanding, the allegations and evidence dealing with Local 6's actions in response to specific requests for information under Section 8(b)(1)(A) of the Act are set forth in this section. The issues and evidence concerning Local 6's duty under Section 8(b)(1)(A) of the Act to inform hiring hall users of rules and regulations where no request has been made is discussed separately in the following section. The allegations respecting Section 8(b)(2) of the Act concerning alleged failures to supply information is discussed in the section thereafter.

### 1. Evidence

On August 3, 1988, Addleman wrote Glen requesting a "complete and final list of what you require as proof of satisfaction of residency requirement." Local 6 did not reply to that letter.

<sup>21</sup>In par. 9(a)(5) the complaint accuses Respondent of violating Sec. 8(b)(1)(A) and (2) of the Act by routinely failing to inform "numerous hiring hall users" why their applications for group I status were denied. In par. 9(d) of the complaint Respondent is alleged to have violated Sec. 8(b)(1)(A) and (2) of the Act when it "routinely failed and refused to inform numerous persons filing appeals . . . why their appeals were rejected" by the referral appeal committee. In par. 9(a) of the complaint Respondent is alleged to have violated Sec. 8(b)(1)(A) and (2) of the Act when it failed to give notice to hiring hall users of either the registration rule described above or the referral appeal committee unemployment requirement. In par. 9(b)(2) of the complaint Respondent is alleged to have violated Sec. 8(b)(1)(A) and (2) of the Act when it failed to give notice to hiring hall users of the eligibility rule.

On October 10, 1988, Addleman wrote to Glen after he had been denied the right to sign book I. His letter sought "specific reason(s)" for the denial of his request to register on book I. This request was never addressed by Local 6. He also wrote to the referral appeal committee seeking that it direct Glen to reply. This letter was not responded to.

On January 6, 1989, Addleman again wrote Glen complaining of unpublished terms for obtaining group I status. Glen did not respond to this complaint.

By letter received by Glen on November 24, 1988, Berkowitz wrote:

Based on the information that I have read, I can't find a reasonable reason for denial of my request, by said committee. Please define terms, conditions and or reasons for said denial. Could you enumerate reasons for denial of said request in written form as per my request.

Glen sent Berkowitz a letter telling him his letter would be referred to the referral appeal committee for their next meeting. No response was thereafter forthcoming.

On October 25, 1988, Bartl wrote Glen asking if there were any deficiencies in his qualification documentation after his request to register on book I had been denied. Local 6 did not respond.

On November 29, 1988, Bartl, having been informed his appeal was denied, sent a letter to Glen with the following text:

In a matter of such great significance I feel that it is of the utmost importance for the committee to explain to me completely and in detail the reason or reasons for their decision and quote the rules and their source documents which pertain to the action taken.

I would very much appreciate a timely response from the Committee addressing all of my above mentioned requests.

Also would you please include a copy of the Referral Appeal Committee hearing of November 18, 1988 minutes with your reply.

Glen responded with a letter saying the request should have been and would be sent to the committee for their next meeting. No additional response occurred.

On February 23, 1990, following his being informed he did not qualify for book I, Bartl wrote Glen asking, "[W]hy you feel that I do not currently meet your requirements for Group I." There was no response.

### 2. Analysis and conclusions

The requests described above and Local 6's noted responses, if any, to them are not seriously disputed. It is settled law that a union must provide information about hiring hall procedures generally and a requesting individual's particular situation when requested to do so. *Electrical Workers IBEW Local 575 (Coleman Electric)*, 270 NLRB 66 (1984), and cases cited earlier.

At the threshold, I find the individuals' requests sought information indisputably relevant to their understanding as hiring hall users of Local 6's hiring hall rules, its standards for determining group I status, and/or Local 6's decisions concerning those matters. Given this finding the burden falls on

Local 6 to demonstrate why the requests should not have been timely answered.

Local 6 does not specifically address each information request nor suggest why in each or indeed any case a response was not required. No claim of confidentiality of the requested information has been made. It is not contended that any specific request would have been burdensome to address. There is insufficient evidence to support a finding that such requests generally present an intolerable burden on Local 6.

I find no effective defense asserted to the General Counsel's allegations here. The arguments of Local 6 respecting its lack of a duty to inform hiring hall users generally of its hiring hall rules and practices, discussed *infra*, do not apply to situations where hiring hall users make specific requests for information respecting the hiring hall process. Accordingly, I find the requests were proper, that Respondent was obligated to respond to them in a complete and timely manner and that it failed to do so. Therefore, I find that in each instance Respondent breached its duty to fairly represent the hiring hall users and in so doing violated Section 8(b)(1)(A) of the Act. I, therefore, sustain the allegations of the complaint addressing these contentions.

*F. The 8(b)(1)(A) Allegations that Local 6 Generally Failed to Apprise Hiring Hall Users of Hiring Hall Rules, Practices, Procedures, and the Basis for Its Rulings on Book I Applications and Appeals*

The complaint alleges various violations of Section 8(b)(1)(A) and (2) of the Act committed by Respondent when it failed to give hiring hall users various information respecting the hiring hall process. In paragraph 9(a)(5) the complaint accuses Respondent of violating Section 8(b)(1)(A) and (2) of the Act by routinely failing to inform "numerous hiring hall users" why their applications for group I status were denied. In paragraph 9(d) of the complaint Respondent is alleged to have violated Section 8(b)(1)(A) and (2) of the Act when it "routinely failed and refused to inform numerous persons filing appeals . . . why their appeals were rejected" by the referral appeal committee. In paragraph 9(a) of the complaint Respondent is alleged to have violated Section 8(b)(1)(A) and (2) of the Act when it failed to give notice to hiring hall users of either the registration rule described above or the referral appeal committee unemployment requirement. In paragraph 9(b)(2) of the complaint Respondent is alleged to have violated Section 8(b)(1)(A) and (2) of the Act when it failed to give notice to hiring hall users of the eligibility rule. Save for paragraph 9(a)(4), discussed *supra*, the complaint does not specifically allege whether the information at issue had been specifically requested by a hiring hall user.

The allegations that Local 6 violated Section 8(b)(1)(A) of the Act when it failed to respond to specific information requests are addressed separately, *supra*. The analysis necessary to resolve the allegations of violations of Section 8(b)(2) of the Act respecting both requested and unrequested information allegations are set forth in a separate section, *infra*. The instant section addresses only the allegations of violations of Section 8(b)(1)(A) of the Act in situations where no specific or discrete request for information of Local 6 was made by a hiring hall user. The issue here is the general duty of a union to disclose hiring hall information without request and to generally make reasonable efforts to ap-

prise hiring hall users of information relevant to their informed use of the hiring hall. The underlying law is initially discussed followed by consideration of when actual and constructive notice of the information at issue was given. Thereafter, analysis and conclusions follow.<sup>22</sup>

1. A union's duty to make reasonable efforts to inform referral users of the hiring hall rules, practices, and procedures

As noted *supra*, a union need not post its hiring hall rules, practices, and procedures nor need it even maintain such rules in written form. It is clear, however, that a union must inform a hiring hall user, on request, of these rules. It is also clear that before a union may implement a significant change in hiring hall rules, it must give hiring hall users timely notice of the change. Implicit in this doctrine is the related obligation to inform hiring hall users of new rules regarding hiring hall operations.

Counsel for Local 6 argues strenuously on brief that there is no obligation on the part of a union operating a hiring hall to give notice to hiring hall users of longstanding rules and procedures of the hiring hall. Rather, argues Respondent, such a union need notify users only of changes in such rules. Thus, Local 6 seeks to distinguish the General Counsel's cited cases such as *Operating Engineers 406 (Ford Construction)*, 262 NLRB 50, 51 (1982), *enfd.* 701 F.2d 504 (5th Cir. 1983), and *Plumbers Local 230*, 293 NLRB 315 (1989).

Respondent also cites *Laborers Local 534 (Butler County Contractors)*, 285 NLRB 202 (1987), on remand from 778 F.2d 284 (6th Cir. 1985), denying enforcement of 272 NLRB 926 (1984). In that case the Board, taking the court's remand as the law of the case, determined a referrant was properly denied a referral given to another in a departure from normal union hiring hall procedures but in accordance with a 30-year unwritten policy of special treatment of steward referrals. Then Board Chairman Dotson, in dissent, noted:

In addition there is insufficient record evidence to establish that the Union publicized its steward exception or implemented it in such a way that employers or employee applicants knew or reasonably should have known about this alleged practice. [285 NLRB at 204.]

Among the General Counsel's cited cases are several which are on point. In *Boilermakers Local 667*, 242 NLRB 1153 (1979), the administrative law judge with Board approval found that the nondiscriminatory application of a

<sup>22</sup> Par. 9(b)(2) deals with the alleged lack of notice respecting the eligibility rule. The General Counsel's complaint paragraph allegation 9(b)(1) attacking the eligibility rule as illegal has been sustained, *supra*. The rule having been found invalid, there is no need to consider the question of notification of the rule. Reviewing authority may differ with this finding however. In light of that fact I have considered making alternative findings respecting notice of the eligibility rule under the assumption that the rule was valid.

As Respondent has noted on brief, the eligibility rule and the registration rule as those terms are used here are in fact part of a single rule set forth in the memorandum of understanding and, Respondent argues, treated as a single rule by Respondent historically. Since I have made findings in this section respecting the registration rule, should it become necessary to address the notice allegations of par. 9(b)(2) of the complaint, my findings respecting the registration rule in essence may be extrapolated to the eligibility rule.

longstanding unwritten referral policy respecting shop quits by a union to the detriment of two referral applicants violated Section 8(b)(1)(A) and (2). The judge found the policy itself was not improper. Rather she concluded that an understanding of the rule was necessary to an informed utilization of the hiring hall. She noted at 1155:

The fault is that unlike [other referral rules] which are precisely spelled out in the collective bargaining agreement available to all, the rule applicable to shop quits is vague and indefinite and nowhere available. . . . a[n employee subject to that rule] has no definite information on which to make a decision on when to quit.

Then Board Chairman Fanning concurring on the 8(b)(1)(A) finding at 242 NLRB 1153 fn. 2, found that the union breached the duty of fair representation in violation of Section 8(b)(1)(A) in failing to publicize its referral rule, since the rule had a substantial impact on employees' job opportunities.

In *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, supra, 270 NLRB 424 (1984), the Board addressed a longstanding hiring hall practice of requiring additional work hours beyond that needed under the contract to qualify as a group I registrant. The Board found the rule invalid but made the following "moreover" findings at 426:

Furthermore, even assuming that these requirements [for more hours] were legitimate, the Respondent has, in any event, violated Section 8(b)(1)(A) and (2) of the Act because the Respondent has not complied with its statutory duty to give applicants for employment adequate notice of its hiring hall procedures.

The Board in reaching this conclusion specifically found that the hiring hall users at issue could not have learned from the manner in which the union operated its hiring hall of the additional requirements that the union was imposing on applicants for group I referral and distinguished those cases where applicants were so apprised.

The Board's recent decision in *Plumbers Local 230*, 293 NLRB 315 (1989), by its terms deals with a union's failure to publicize a change in hiring hall rules made over 1 year before the change was applied to a referent who was at the time unaware of its existence. The Board, reversing the administrative law judge, found the union had "failed to make a good-faith effort to give timely notice of the rule change in a manner reasonably calculated to reach all those who used the exclusive hiring hall," (293 NLRB 316). Since the rule was a matter critical to the referent's employment status and his lack of understanding caused him to miss a job referral, the union was found to have violated Section 8(b)(1)(A) and (2) of the Act.

I reject the argument of counsel for Local 6 that a union's statutory obligation to inform users of hiring hall rules is limited only to a duty to notify users of changes occurring within the 6-month period preceding the filing of a charge. To the extent this argument is grounded in the 6-month statute of limitations set forth in Section 10(b) of the Act, I have rejected the argument supra.

While, as Respondent counsel points out on brief, the bulk of the cases in this area discusses the failures of unions to inform hiring hall users of *changes* in hiring hall rules, not

all cases do so. See, e.g., *Boilermakers Local 667*, 242 NLRB 1153 (1979). In addition, some of the hiring hall rule changes discussed by the Board in the cases, cited supra, had been made so long before the relevant referent was injured by lack of knowledge of the rule that the distinction between a changed rule and an unchanged rule was immaterial to the outcome of the case.

Finally, I do not find counsel for Respondent's heavy reliance on *Laborers Local 534 (Butler County Contractors)*, 285 NLRB 202 (1987), sustains his argument. The Board in that case specifically noted its decision on remand was based on accepting the decision of the court as the law of the case. Thus, the holding has greatly diminished precedential value. Second, the assertions in the dissent quoted supra do not persuasively suggest a contrary finding by the panel majority in whose opinion this issue is not discussed. Accordingly, I do not find *Laborers Local 534* persuasive nor does it compel a contrary finding given my other findings above.

I find the Union's duty to make reasonable efforts to inform hiring hall users of all aspects of hiring hall operations turns on a simple test of relevancy. Is the information respecting the particular aspect of the hiring hall operation in question necessary to the hiring hall users' intelligent utilization of the employment referral system? If so, the union operating the hiring hall must make reasonable efforts to inform the users of the necessary information.

Reasonableness is a factual question which will of course be judged in context. Since longstanding rules of hiring hall operation will often be well known by hiring hall users, little effort may be necessary by a union to meet the standard in any situation. If a new rule is unknown to all hiring hall users, greater efforts may well be required.

This duty while important is not onerous in its impact. Board law is clear, with the lead cases cited supra, that a union need not have written hiring hall rules nor need it post its hiring hall rules. Further, hiring hall users may be constructively charged with knowledge of hiring hall rules through their being given hiring hall referral questionnaires or similar disclosure forms. Some hiring hall rules are so universal in application that hiring hall users may be presumed to know them. Basic hiring hall first-in-first-out rules are not unknown to users and are frequently detailed in the collective-bargaining agreement. Further in specific trades, such as the skilled construction trades, hiring hall groupings and rules are largely similar throughout the industry.

There is no limit on the rules, practices, or procedures of any kind which must be disclosed so long as their disclosure is reasonably necessary to the hiring hall users to all allow intelligent use of the hiring hall system. The test is one of the hiring hall users' need for the information, not the form or type of information involved. Hiring halls dispense or allot employment opportunities, i.e., jobs. The obtaining of employment is serious business and information respecting the obtaining of employment through the hiring hall process—from commencement of that process through to the conclusion—is of critical importance to hiring hall users to obtain desired employment.

When a union fails its duty of fair representation by failing to make reasonable efforts to disclose information necessary to intelligent and effective use of the hiring hall system, it violates Section 8(b)(1)(A) of the Act. Further in such situations, the union violates Section 8(b)(2) of the Act, if the

union causes or attempts to cause the hiring hall users to lose employment opportunities as a result of its failure.

In summary I find that the Board requires labor organizations operating exclusive hiring halls, as Local 6 here, to make reasonable efforts to inform hiring hall users of the rules, regulations, and procedures of the hiring hall so that the users may make informed judgments and take informed actions in regards thereto. I specifically reject the contention of Local 6 that such an obligation to inform users extends only to changes in hiring hall rules undertaken within a 6-month period.

2. The specific hiring hall rules and procedures at issue and Respondent's obligation to make reasonable effort to inform hiring hall users of them

Having found a general obligation on the part of unions operating hiring halls and Local 6 in particular to inform hiring hall users of all hiring hall rules, regulations, and procedures necessary for the hiring hall users to understand and intelligently utilize the hiring hall, it is appropriate to determine if the specific rules, regulations, and procedures which are the subject of the General Counsel's complaint allegations fall into that category.

The General Counsel's complaint alleges Local 6 wrongfully withheld information respecting two broad categories of information. The first category may be characterized as explanatory information alleged to be necessary to understand the actions taken by Local 6. The General Counsel alleges withholding of information explaining why group I applications were denied by Glen. Similarly, the General Counsel alleges that Local 6 failed to inform hiring hall users why their referral appeals were rejected. These allegations deal with the broad range of hiring hall and appeal rules, including Local 6's requirements of specific types of information and proofs necessary to be submitted by applicants to successfully obtain book I registration. The second category of information alleged to have been wrongfully withheld by Local 6 from hiring hall users are the three rules specifically pleaded by the General Counsel here titled the eligibility rule, the registration rule, and the referral appeal committee unemployment requirement rule.

The first category described above of what may be called explanatory information deals with all hiring hall rules and regulations which are relevant to any particular denial of a hiring hall user's group I application or appeal. The information at issue is broad for it is defined as any and all information necessary to allow the hiring hall user to understand the action taken on his or her request. The very definition of the class of information that needs be disclosed also establishes the need of the hiring hall user for the information. The information that is alleged to have been withheld is by definition information specifically necessary to an identified hiring hall user to understand the reasons for the failure of the individual's group I application or appeal. There is no doubt and I find that the need of individuals in such circumstances for the information withheld is clearly substantial. It is obvious that the individuals at the time the information was being withheld had failed to understand the rules sufficiently to perfect either a group I application or appeal from a denial of the application or to understand the rules sufficiently to realize why their efforts were unsuccessful.

I also find this information directly relevant to the hiring hall users obtaining employment. The goal which the hiring hall users in these situations have failed to obtain, group I registration, is clearly a matter directly relevant to the hiring hall users' intelligent use of the hiring hall to obtain employment opportunities. Priority dispatch, which would be achieved as a group I registrant, accelerates and thus enhances employment opportunities.

Further, I find there is no undue burden on Local 6 and its agent, the referral appeal committee, to provide this information. In the most common situation involved here, either Glen on behalf of Local 6 or the referral appeal committee has made a specific decision on a hiring hall user's application for group I. The required information in those situations is simply the information, i.e., hiring hall rules, regulations, and procedures as applied to the relevant facts of the situation, used by Local 6 or the referral appeal committee in reaching the decision involved. Respondent is obligated to tell the hiring hall user not only that the decision was adverse on his or her request but why the decision came out the way that it did with a specification of the operative rules and regulations as applied to the specific facts involved there.

Indeed the referral appeal committee minutes often record an underlying rationale for decisions taken by the body. Thus it may not be argued that such information is burdensome to reveal to the appellant whose appeal is being denied. Respondent, on this record, consistently wrote to the hiring hall user and informed him or her that Local 6 or the referral appeal committee was denying the hiring hall user's application. Such a letter could be expanded to contain the rationale required here. I specifically find that full disclosure of the underlying rationale of adverse decisions made respecting all aspects of applicant's group I applications and appeals is both reasonable and necessary for Local 6.

The General Counsel's allegations also deal with Respondent's failure to make reasonable efforts to inform hiring hall users generally of the eligibility rule, the registration rule, and the referral appeal rule respecting the requirement that appellants be unemployed. Where these rules are the basis or part of the basis for Local 6 denying applications or appeals as described immediately above, they are included in the rules which must be disclosed. The disclosure obligation at issue here, however, is not the postdecision explanation by Local 6 of action taken. Rather the obligation at issue is one of informing all hiring hall users of the existence of the rules so that they may make decisions and take actions with the rules in mind thus avoiding an unsuccessful application or appeal.

I find that knowledge of these three rules is necessary for hiring hall users to make decisions respecting their use of the hiring hall. Thus, for example a hiring hall user must know about the registration rule before he or she even considers attempting to sign book I at Local 6. Ignorance of the rule could cause a hiring hall user to sign book I at another hiring hall, thus disqualifying himself or herself from book I at Local 6, without understanding or appreciating the consequences of the act. Knowledge of the registration rule before any action has been taken in registering on any hiring hall book I allows the hiring hall user to make an informed decision respecting the options available. So, too, knowledge of the referral appeal committee rule that appellants must be

unemployed, gained before an appeal is taken, will allow the potential appellant to either forgo an appeal in the knowledge that his or her continuing employment will render any appeal unsuccessful or allow the appellant to take appropriate actions to ensure that the rule is met and the appeal is not lost in ignorant noncompliance with its terms.

I also do not find it burdensome or otherwise unreasonable for Local 6 to disclose these three rules to potential hiring hall users. Posting and/or dissemination of written copies of hiring hall rules and regulations, like the disclosure of the type found necessary above respecting reason as for adverse actions taken, is simply undertaken. Alternatives may be utilized if dissemination of the information is accomplished.

Given the above facts and circumstances and my findings and conclusions with regard thereto, I further find that there is no question that the rules, regulations and procedures discussed immediately above clearly fall into the category of rules and regulations the cases require a union operating a hiring hall Disclosure in this context means a union must make reasonable efforts to inform hiring hall users of such rules. It is appropriate therefore to turn to Local 6's efforts with respect to these matters. to disclose to all hiring hall users. It is appropriate therefore to turn to Local 6's efforts with respect to these matters.

### 3. Local 6's efforts to notify hiring hall users of the rules at issue

The General Counsel alleges that from a period beginning 6 months before the filing of the first charge here, i.e., the period beginning at the limit of the statute of limitations set forth in Section 10(b) of the Act, June 14, 1988, through the date of the posting of the memorandum of agreement,<sup>23</sup> a disputed date further discussed infra, Respondent failed to provide proper notice of the hiring hall rules and procedures discussed above. The General Counsel also alleges that Respondent's failure to inform hiring hall users why their group I applications were denied (complaint par. 9(a)(5)) and Respondent's failure to inform referral appeal committee appellants of the reason why their appeals were denied (complaint par. 9(d)) continue to date.

The contract has been posted at all material times in the hiring hall. Respondent has never reduced its hiring hall rules and regulations to a single written compilation. Nor had Local 6 made any general attempts to disclose the registration rule, eligibility rule, or referral appeal committee unemployment rule before the posting of the memorandum of understanding. Respondent contends, however, that the rules at issue herein were generally known by hiring hall users.

The extent of knowledge of the relevant rules among hiring hall users before the posting of the Memorandum of Understanding, the dispute respecting the date of the Memorandum of Understanding's posting and Local 6's subsequent conduct under complaint paragraphs 9(a)(5) and (d) are discussed below.

<sup>23</sup> Since the General Counsel concedes the posting of the memorandum and notice gave actual or constructive notice to all hiring hall users of the registration and referral appeal committee standing rules, the date of its posting marks the end of the period during which the General Counsel alleges Respondent failed to properly inform hiring hall users of these rules.

#### a. *The extent of hiring hall users' knowledge of the hiring hall rules at issue herein*

A union is not obligated to inform hiring users' about rules and regulations which they already understand. It is therefore relevant to consider what was known by specific hiring hall users at particular times and what effect that may have on the Local 6's obligation to make reasonable efforts to disclose hiring hall rules and procedures.

Respondent asserts on brief at page 11 footnote 6: "Numerous charging parties were aware of the rule[s] included in the memorandum of understanding] before its posting. [See Tr. 424.]" The transcript reference is to the testimony of Charging Party Addleman who testified that he had had occasion to discuss Local 6 rules with other travelers on breaks during work for various contractors. He testified that a particular traveler told him of the rule: "that you cannot be on book I in Local 6 if he or she is on book I in another local union" before September 30, 1988. Charging Party Addleman also testified that, while waiting in the ante room for his appeal to be heard on November 18, 1988, another appellant informed the others waiting for their appeals to be heard that their appeals would only be heard if they were unemployed. Further, there was testimony from some Charging Parties that they had read the Regional Director's January 11, 1989 dismissal letter respecting Charging Party Berkowitz' charge posted in the hiring hall.

The General Counsel, advancing the testimony of Addleman that he did not believe the statements respecting the need to be unemployed for an appeal and the "rumor" type of information that was exchanged between travelers anxious to understand the process of becoming book I at Local 6, argues the type of information acquired in this fashion by the Charging Parties is not "hard" information sufficient to be relied on.

The Charging Parties collectively painted a rather sad tale of multiple efforts to obtain seemingly elusive information about Local 6's rules and standards which would explain their status and guide their efforts to become eligible to register on Local 6's book I. The travelers clearly exchanged information, hopes, and speculation on how to obtain group I status with Local 6. The actions of the Charging Parties generally indicate that they did not have a complete understanding of Local 6's rules and regulations. Nor does the evidence suggest that Respondent's efforts respecting these individuals rise to the level of reasonable efforts to inform them of the rules.

Anecdotal or fellow traveler supplied information of the type Addleman described, received in the manner he did, simply does not rise to the level of specific, informed, or trustworthy information about Respondent's procedures which could confidently be relied on by a hiring hall user. Neither Addleman, based on the testimony described above, nor the other Charging Parties, based on their testimony, may be held to have had sufficient actual or constructive knowledge of Local 6 procedures based on what they learned from other nonauthoritative unit members or travelers. Further, I specifically find that information about Local 6's rules or practices recited in the narrative of the Regional Director's dismissal of a charge, when posted in the hiring hall offices, is not sufficient notice to hiring hall users of the truth of the assertions there.

I have found above that hiring hall users generally and the Charging Parties in particular did not gain sufficient information about Respondent's hiring hall rules and regulations from other employees' speculations or from the contents of the Board dismissal letter to Charging Party Berkowitz. I further find that this information did not reduce Respondent's obligation to inform hiring hall users, especially travelers, of its hiring hall rules and procedures. Save to the extent Respondent's agents orally or in writing communicated specific rules to the Charging Parties directly or indirectly, which did in some cases occur,<sup>24</sup> the Charging Parties are not charged with actual or constructive knowledge of Respondent's procedures.

*b. The date of posting of the memorandum of agreement and the notice*

As set forth supra, the Union and the Association entered into a memorandum of understanding on or about April 6, 1989. The memorandum of agreement and a notice, quoted supra, were posted in the hiring hall thereafter. A dispute exists and there is conflicting testimony respecting when these postings occurred.

Franz Glen testified that the memorandum of agreement was posted in Local 6's hiring hall area the day after it was signed and that the notice was posted about a month later. In a June 29, 1989 affidavit submitted to the Regional Office, Glen made similar assertions.

Walter Johnson, a traveler, testified that he had regularly used Local 6's hiring hall and is personally familiar with the area of Local 6's offices where documents are posted. He testified that although he had been in Local 6's offices perhaps a dozen times between April 1, 1989, and April 3, 1990, and examined the posted documents with great care and interest on each occasion, he did not see the memorandum of agreement or the notice posted until the later date.

Charging Party Berkowitz testified that he first saw the memorandum of understanding posted in early March 1990 but that the notice was not then posted. Berkowitz established that he was regularly in Local 6's offices in the period of June through June 13, 1989, on August 15, 1989, on multiple occasions in November and December 1989, and in January and February 1990. Berkowitz testified he perused the postings in Local 6's offices each time looking for any information relevant to his challenge to Local 6. He testified with conviction that, had the memorandum of understanding or the notice been posted, he would have seen and remembered the event. On first seeing the posted memorandum of understanding, Berkowitz contacted and met with his counsel in the first half of March 1990. Beginning April 12, 1990, Berkowitz was not in the hiring hall for some months. Charging Party Bartl testified that he first saw the memorandum of understanding posted at Local 6 shortly before meeting with his counsel on March 9, 1990.

The noted testimony is clearly in sharp conflict. The great interest of Charging Parties Berkowitz and Bartl and traveler Johnson in the procedures described in the memorandum of understanding and notice convince me that they would not

have failed to recall these documents if they had seen them posted in the hiring hall earlier than they testified. Indeed Bartl's and Berkowitz' testimony that they met with counsel soon after seeing the memorandum of understanding confirms this conviction. I also find highly probable the proposition that such individuals would indeed peruse Local 6's postings with care and curiosity to see if new material relevant to their interests had been posted. Thus, I find that these three individuals' testimony concerning the documents that were not there is not susceptible to easy discount on the basis of their lack of careful inspection of posted documents or failure to accurately recall what was posted and when such documents first appeared.

Franz Glen's testimony is equally certain. Having entered into the signed agreement with the Association it would not seem improbable that the agreement would be immediately posted. Further, it seems unlikely that Glen would assert in an affidavit signed in June 1989 and submitted to the Regional Office soon thereafter that the memorandum of understanding had been posted in April 1989, if the document was not in fact posted at least by the time the affidavit was submitted.

I resolve these conflicts in favor of the Charging Parties and Johnson. Thus I credit their testimony and discredit Franz Glen to the extent his testimony differs. I do so based on my favorable view of the demeanor of each when compared and contrasted to that of Glen. Simply put, based on their demeanor during this portion of their testimony, I believed Johnson, Bartl, and Berkowitz and did not believe Glen.

I also find that there are several factors which tend to support the proposition that the memorandum was not immediately posted after it was signed. It is clear from Glen's testimony that the referral appeal committee rule respecting unemployment at issue here was something the Association was not anxious to widely publicize and that Glen well knew that. Second, Local 6 in its continued posting of a dismissal letter which had been rescinded by the Regional Director suggests that Local 6 was not above posting of documents as a tactical device not always consistent with underlying realities. Finally, as noted supra, I have found that Respondent during this period was engaged in a wide ranging course of conduct with its major technique being a refusal to disclose the very rules set forth in the memorandum.

Given my resolution of credibility, I find that the memorandum of understanding was first posted in Local 6's offices in early March 1990 and, consistent with Glen's unchallenged testimony, the notice was posted about a month later. I specifically find the memorandum was not posted sooner than March 1990. The posting of the memorandum of understanding constitutes the first generally disclosed written notice of Local 6's referral appeal committee standing rule and Local 6's registration rule. The eligibility rule had been publicized earlier.<sup>25</sup>

<sup>24</sup>Such circumstances are also relevant to issues of remedy concerning violations of Sec. 8(b)(2) of the Act which have been deferred to the compliance stage of these proceedings. See the remedy section, *infra*.

<sup>25</sup>Notice of the eligibility rule is admitted by counsel for the General Counsel, see her brief p. 36 fn. 32, to have been accomplished by the use of the current referral questionnaire no later than August 10, 1989.

*c. Respondent's disclosure of the reasons for denying group I registration applications and referral appeals*

There was no dispute that, with but very few exceptions, Glen used the following or similar language to inform unsuccessful group I applicants who were placed on book II when their application for group I was denied. A typical letter stated: "[P]lease be advised that our records show that you are registered on the highest priority group for which you qualify." Reasons for the denials were virtually without exception withheld.

Glen, writing to unsuccessful appellants whose appeal had been denied by the referral appeal committee, regularly used similar language. Thus a typical letter stated:

The Referral Appeal Committee at their meeting held on November 18, 1988 took the following action regarding your appeal.

Based on the information before the Committee, the Committee finds that your appeal at this time is denied.

Where the committee determined an appeal was not provided because the appellant was employed at the time of the appeal hearing, Glen would simply inform the appellant the committee had determined that "the appeal is not properly before the committee at this time."

With few exceptions, Glen did not orally explain his decision to deny an applicant the right to register on Local 6's book I. Nor did the referral appeal committee often announce to appellants their decision at the appeal itself or explain their reasoning or the underlying rules applicable to the appeal. Referral appeal committee minutes reflecting decisions taken were not issued to appellants even when specific requests were made. As noted supra, various specific followup requests by hiring hall users, whose applications and/or appeals were denied, for more information were not responded to or were denied by Respondent.

While Glen and the referral appeal committee have been generally more forthcoming since the posting of the memorandum of understanding and the notice, Respondent's general practice of nondisclosure or minimal disclosure seemingly continued unabated to the time of the hearing.

#### 4. Conclusions

Given my findings above, I conclude that Local 6 had a general duty to make reasonable efforts to inform hiring hall users of all relevant rules, practices, and procedures of the hiring hall and the referral appeal committee. I also find that Respondent failed in that duty by refusing to inform hiring hall users of the eligibility rule, the registration rule, and the referral appeal committee rule requiring an appellant to be unemployed on the day of his hearing from the beginning of the statutory period under Section 10(b) of the Act preceding the earliest charge filed in this case, June 14, 1988, to the date of the posting of the memorandum of agreement, found supra, to be early March 1990.

I further find that Respondent from the period of June 14, 1988, to the time of the hearing violated its duty to disclose rules, procedures, and practices of the hiring hall to hiring hall users by declining to inform unsuccessful book I applicants and referral appeal committee appellants of the reasons for their failure to perfect either their book I registration or appeal.

Thus, I find that Respondent violated its duty to fairly represent the users of its hiring hall by failing to make reasonable efforts to inform hiring hall users of information concerning the hiring hall's operations they needed to effectively utilize the hiring hall process to best obtain employment opportunities. Based on the authority cited supra, I also find that Local 6 by engaging in this conduct violated Section 8(b)(1)(A) of the Act.

*G. The 8(b)(2) Allegations Dealing with Local 6's Failure to Inform Hiring Hall Users of Necessary and/or Requested Hiring Hall Information*

As set forth in sections E and F immediately above, I have found that Local 6 violated Section 8(b)(1)(A) of the Act in withholding information from hiring hall users. The General Counsel further contends that such conduct violates Section 8(b)(2) of the Act. Thus, the General Counsel argues that Respondent's wrongful withholding of information, as in *Boilermakers Local 667*, supra, 242 NLRB 1153 (1979), had the ultimate effect of denying the hiring hall users a superior dispatch priority and was intended to have that effect by Local 6. Local 6 argues the General Counsel, therefore, caused or attempted to cause employment discrimination in violation of Section 8(b)(2) of the Act.

It is not an overstatement of Board law in this context to assert, as the cases cited supra hold, that, if a union's actions in violation of Section 8(b)(1)(A) of the Act cause or attempt to cause a hiring hall user to lose employment which, but for the wrongdoing, would have been obtained, then the union also violates Section 8(b)(2) of the Act. The issues in such cases, however, include the factual questions of causation and motivation.

The General Counsel argues that the denials of information found violative of Section 8(b)(1)(A) in sections E and F, supra, caused hiring hall users including the Charging Parties, travelers, and other individuals to lose employment or constituted an attempt by Local 6 to cause the hiring hall users to lose employment. Respondent strenuously contests these assertions.

It is clear that not all withholding of information by Local 6 found violative of Section 8(b)(1)(A) of the Act on this record actually caused the Charging Parties or others to lose specific employment opportunities. As in *Boilermakers Local 667*, supra, 242 NLRB 1153 (1979), however, if all relevant hiring hall rules and regulations had been known by the hiring hall users involved here, some of the actions they took or failed to take could have been better ordered to obtain book I registration and, consequentially faster dispatch to employment. Thus, for example, Charging Party Finn, who applied for book I at Local 6 on February 1, 1989, applied for book I at Local 551 the following day. Had he been made aware of Local 6's registration rule, it is highly likely he would not have so quickly signed another local's book I. On a similar basis, had the various Charging Parties, who attended their referral appeal committee hearing at a time they were employed, known of the referral appeal committee requirement that an appellant be unemployed at his or her hearing, they surely would have acted differently. Certainly some of the book I applications filed by the Charging Parties here would have better met Local 6's requirements as to form and proof had the applicants been informed of those requirements before the applications were submitted. Further,

later applications would have been prepared if the reasons for denial of the earlier applications had been explained.

Whether or not each and every individual act of withholding found a violation of Section 8(b)(1)(A) above caused an employment loss is problematical. As Respondent notes, in some cases, failure to disclose reasons for Local 6's individual actions respecting the Charging Parties or specific disclosure of the hiring hall rules and procedures would not have accelerated given individuals' qualification for group I status. The Charging Parties here, as well as the travelers who were generally concerned with the hiring hall rules at issue here, were however generally completely qualified for book I at Local 6 save for the operation of the eligibility rule found invalid supra. Further their difficulties in obtaining Local 6 group I registration were not generally ones which were difficult to overcome. Knowledge of the registration rule and/or specific knowledge of what Local 6 wanted from them or, in many cases, what they had failed to do or provide in their first application, would have allowed them to quickly qualify for group I. Thus, I find, generally, the information withheld the travelers herein in violation of Section 8(b)(1)(A) of the Act would also have denied them employment opportunities. This finding supports a further finding that the actions were also a violation of Section 8(b)(2) of the Act.

Further, however, as noted above in section D,4, supra, I have found Respondent generally engaged in a course of conduct designed to prevent or at least delay travelers in becoming eligible for Local 6's book I. Local 6's withholding of information was part of that course of conduct. Therefore, each of the actions found violative of Section 8(b)(1)(A) here, even if it did not cause actual employment discrimination, constituted an attempt by Local 6 to cause employment discrimination. Thus, as part of a course of conduct violative of Section 8(b)(1)(A) of the Act, Respondent's individual acts of withholding information were attempts to cause travelers to lose employment opportunities and therefore constituted violations of Section 8(b)(2) of the Act and I so find.

#### *H. Allegations Respecting Respondent's Hiring Hall Questionnaires*

Paragraph 9(a)(3) of the complaint alleges that Local 6 has maintained and used referral questionnaires that "mislead hiring hall applicants into concluding that four years residency instead of one year as stated in the Agreements is required to achieve residency status required for group I status." Complaint paragraph 9(a)(3) at subparagraph (A) alleges this was achieved by Local 6 through the presence on questionnaires of "questions concerning four-year area residency and no questions regarding the Agreement's one-year residency requirement." Complaint paragraph 9(a)(3) at subparagraph (B) alleges the questionnaires mislead through the entry "no individual item will qualify or disqualify an applicant" for permanent residency, when in practice, the complaint alleges, Respondent applies a presumption of permanent residency when the applicant can prove a 4-year area residency. Each quoted subparagraph of the complaint is alleged to constitute a violation of Section 8(b)(1)(A) and (2) of the Act.

Counsel for the General Counsel argues that the questionnaires violate Local 6's duty of fair representation which she asserts includes the "duty not to purposely keep unit members and job applicants uninformed or misinformed concern-

ing matters that may affect their employment status." (G.C. Br. 110, case citations omitted.) The doctrine that a union may not through action or inaction purposely mislead represented employees respecting employment matters is neither recent nor novel and is amply supported by the cases cited supra.

The General Counsel's argument, which is based on the language of the questionnaires quoted in full supra, is that the questionnaires mislead, those who filled them out into believing they need 4 years residence within Local 6's geographical area to achieve permanent residence status. Such a belief could have the effect of precluding a qualified individual from attempting to register on book I in the mistaken belief that he or she did not qualify because of a lack of 4 years' residence in the area.

Respondent disputes the logic and force of the General Counsel's assertion. Respondent argues further, however, that there was no evidence that any particular individual was ever misled by any questionnaire or that a potential applicant's conduct was altered by the questionnaires. The General Counsel argues that a specific individual need not be identified if the conduct, applying normal standards of proof, may fairly be determined to have been likely to mislead individuals during the period addressed in the complaint. On the narrow facts of this case, where the individual members of the class of potential hiring hall users who might have been discouraged from ever applying for book I are by their very nature difficult if not impossible to specifically identify, I agree with the General Counsel. To rule otherwise would render unfair labor practice conduct addressed to classes of individuals who may not be readily identified essentially beyond the enforcement powers of the Act and frustrate the will of Congress. I shall turn, therefore, to the force of the General Counsel's argument that the conduct would likely mislead hiring hall users.

Considering the arguments of the parties on the question and noting the General Counsel's burden of proof, the questionnaires do in my view pose the possibility that some otherwise qualified individuals were misled into believing that they needed 4 years' residency in Local 6's established residential area and therefore did not apply for group I even though they were otherwise qualified. This is particularly so where travelers have generally been uninformed about Local 6's requirements for group I and where specific inquiries by travelers about the requirements have gone unanswered.

As noted supra, I have found that Respondent during relevant times has engaged in a course of conduct specifically intended to prevent or at least delay and retard the registration of qualified travelers on Local 6's group I. I find that Respondent's use of the questionnaires as alleged here is but one more improper action by Local 6 in furtherance of its deliberate scheme to discourage and delay legally qualified travelers from obtaining group I registration. Given this finding, I further find in agreement with the General Counsel that the questionnaires in the context of Respondent's entire course of conduct violate Respondent's duty to fairly inform hiring hall users of matters relevant to their utilization of the hiring hall system and that this conduct violates Section 8(b)(1)(A) and (2) of the Act.

### I. *Allegations of Improper Statements by Conroy*

The complaint at paragraph 9(c) alleges that Conroy on October 21, 1988, impliedly threatened a hiring hall user for filing charges with the Board. Complaint paragraph 9(e) alleges that Conroy threatened a hiring hall user on November 9, 1990, if he pursued his Board charges.

#### 1. October 21, 1988

Charging Party La'Moyne Addleman testified that on October 21, 1988, he and Conroy spoke for some time as Conroy was locking up the dispatch hall. Addleman testified that Conroy first asked Addleman if he had a tape recorder with him, patted him down to confirm that no such device was present, and then told him in colloquial terms that he was making it difficult for the referral system to operate and that Local 6 did not "need this." Addleman further recalled that Conroy told him that Local 6 was already involved with the NLRB and that they did not need Addleman's appeal. Conroy also told him that he should withdraw his NLRB complaint. Conroy did not deny the specific remarks attributed to him. He specifically denied ever threatening Addleman or suggesting Addleman would be treated differently if he withdrew his NLRB charge.

I credit Addleman's testimony which was credibly delivered and was not directly contradicted by Conroy. The General Counsel argues: "Conroy's statements unlawfully admonish Addleman for having filed his charge, urge him to withdraw it, and impliedly threaten him with unfavorable treatment for having done so." (G.C. Br. 115.) Respondent argues that the evidence does not prove a threat or even an implied threat citing *NLRB v. Laborers Local 534*, 778 F.2d 284 (6th Cir. 1985).

I find no violation of Section 8(b)(1)(A) of the Act in Conroy's statements to Addleman. The General Counsel's cited cases are distinguishable in that they turn on specific threats of adverse consequences or "recriminations" to individuals who filed charges with the Board. Here no direct threat was made nor was a threat implied which would sustain the violation alleged. Accordingly, I shall dismiss this allegation of the complaint.

#### 2. November 9, 1990

Charging Party Michael Berkowitz testified to a conversation with Conroy on November 9, 1990, which lasted off and on for about 2 hours. Following protracted banter respecting Berkowitz' Board charge and the allegations of others and, as the parties were separating, Berkowitz testified that he told Conroy that if the matter went to trial the NLRB would make his case a "class action." Berkowitz testified that Conroy responded that, if the case "became a class action . . . you will be killed." Conroy denied threatening to kill Berkowitz. He added that any statement of his concerning an individual being killed would have been addressed metaphorically to the outcome of the litigation, i.e., as a defeated sports team is "killed" on the playing field.

There is no dispute that a threat to kill in the context presented here would violate Section 8(b)(1)(A) of the Act if found. The parties strenuously contested the credibility of the conflicting witnesses. In resolving the conflict here I have considered the entire record including evidence concerning the relationship between Charging Party Berkowitz and Local

6's dispatcher. For the reasons which follow I credit Berkowitz that a threat rather than a metaphorical allusion was made and sustain the violation as alleged.

I agree with the parties that the conversation at issue involved protracted banter. I further find that passions rose and fundamentally antagonistic positions on important matters of concern to each man were expressed. Thus, I find that the ending remarks at issue here were not jovial but rather impassioned and intended to be "parting shots" in the day's debate. Conroy's testimony that the "killing" reference, if made, was metaphoric and directed to the outcome of the litigation is not implausible. Considering the demeanor of the two witnesses, however, I credit Berkowitz over Conroy and find that the statement was made without objectively evident clues that it was intended as a metaphor and was therefore objectively perceived as a threat by Berkowitz rather than a disdainful estimate by Conroy of the merits of Berkowitz' case should it be transmuted into a "class action."

Counsel for Respondent argues that there is no suggestion that Conroy or Respondent has been accused of physical violence or that Berkowitz' life has been other than "apparently, blissfully peaceful." He further points out that the two conversants left the hall together—an action unusual for two individuals involved in a death threat. I find that the "you will be killed" remark may have been a rhetorical overstatement in the concluding moments of an impassioned debate rather than a calculated threat designed to induce Berkowitz to act in a manner favorable to Conroy under threat of death. Such an impulsive overstatement, however, is also impermissible and also violates Section 8(b)(1)(A) of the Act.<sup>26</sup>

### J. *Allegation that Charging Party Berroyer Was Improperly Denied Group I Status from March 28 Through April 3, 1986*

Paragraph 9(f) of the amended complaint alleges that Respondent delayed placing Berroyer on book I from March 28 to April 4, 1989. The General Counsel argues that Local 6 had facts sufficient to allow a group I registration in February and in fact had determined to do so, but that Respondent unreasonably delayed from the March 28 initial classification on book II to April 3, 1989, when the error was righted.

Respondent argues on brief at 62-63:

[T]he General Counsel did establish on March 28, 1989 that Mr. Berroyer met the qualification for Group I on March 28, 1989. The General Counsel, however, did not offer evidence of why the week's delay occurred.

<sup>26</sup> Respondent makes two other arguments. First, Respondent argues that the allegation "raises this case beyond the hiring hall dispute . . . to apparent violations of the criminal laws." Neither a criminal statute nor a criminal standard of proof is involved here. This matter is exclusively limited to the issues raised by the complaint under the Act and has been resolved on that basis. Accordingly, I find the argument without force. Second, Respondent argues that no proof was offered that Local 6 authorized Conroy to engage in conduct of the type alleged. There is no dispute that Conroy was an agent of Respondent as a dispatcher. Local 6 is responsible for the conduct found here committed by its dispatcher. It is unnecessary under the laws of agency to show actual authority granted to the agent by the principal to engage in illegal acts during the course of his duties as agent.

There is no evidence of motive and motive is an element of 8(b)(1)(A) and 8(b)(2).

Respondent argues further that the simple process of responding to a group I registration “normally take a few days, even if one is qualified.” Thus, Respondent contends the delay here is the same delay that would confront any group I registrant and is therefore benign and not violative of the Act.

The General Counsel counters with the assertion on brief that many applications for group I whose processing records are in evidence were responded to by Glen “on the very day they [were] received or by the next day or two.” More importantly the General Counsel points out Berroyer’s unchallenged testimony concerning his conversation with either Conroy or Dasher on March 27, 1989, was that he was told that Glen had decided that Local 6 would no longer give Berroyer book I. This undisputed testimony establishes, the General Counsel argues, that Local 6’s registration of Berroyer as book II on March 28, 1989, as opposed to book I was a decision taken consciously and in full knowledge of all the circumstances, rather than a simple processing delay pending Glen’s review of the application which process simply took a few days to accomplish.

I note initially that Charging Party Berroyer was qualified in every respect for group I when he applied in November 1988 save for the application of the eligibility rule which has been found invalid, *supra*. Thus Berroyer was denied group I eligibility by Respondent in November 1988 in violation of Section 8(b)(1)(A) and (2) of the Act. The remedy for that violation as set forth in the remedy section of his decision, *infra*, includes bringing the individual’s group I status to what it should have been and therefore fully addresses the period at issue here.

Working again on the assumption that my findings respecting the invalidity of the eligibility are not sustained on review, and in order to avoid a remand on this issue in such circumstances, I shall make the following conditional findings here. Relying on the unchallenged testimony of Berroyer respecting the statement of Respondent’s agent that Local 6 had decided Berroyer was no longer to be on book I and my further determination, set forth in detail earlier, that Respondent was taking every opportunity to delay if not defeat traveler book I registration, I find Respondent deliberately acted to delay Berroyer’s book I classification as alleged by the General Counsel. In so finding, I specifically reject Respondent’s argument that the delay here was a common, benign result of the customary application of Local 6’s legitimate business practices utilized in its hiring hall operation. Accordingly, I find that Berroyer was denied his book I status because he was a traveler and not for legitimate reasons for the period at issue. Such conduct by Local 6 violates Section 8(b)(1)(A) of the Act.

Respondent contends the delay in obtaining group I registration, even if improper, caused no delay in Berroyer’s obtaining a dispatch. This is a matter I find appropriately deferred to the compliance stage of these proceedings consistent with my rulings in the remedy section of this decision, *infra*. I have found the delay in registration was deliberate. I further find that it was also an attempt to cause Berroyer to lose employment opportunities. Therefore, I find the conduct also violates Section 8(b)(2) of the Act.

## REMEDY

Having found Local 6 has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefore and take certain affirmative action designed to effectuate the policies of the Act.

### I. RESCISSION

Respondent shall be directed to rescind the eligibility rule and eliminate any and all misleading elements from referral questionnaires which may fairly lead those hiring hall users considering applying for group I from concluding there are requirements beyond those which are in fact in place, including questions which would create the impression that the eligibility rule found invalid here continues to be applied and enforced.

### II. CHANGES IN HIRING HALL OPERATIONS

Respondent shall also be directed to timely respond to requests for information by actual or potential hiring hall users respecting hiring hall and referral appeal procedures both as to generally inquiries and as to specific questions concerning how the rules may apply to the specific requesting individual. Respondent shall further be required to make reasonable efforts to inform all actual and potential hiring hall users of all rules, requirements, procedures, practices, and all other substantive and procedural aspects of the hiring hall process reasonably necessary for hiring hall users to make intelligent decisions respecting its best use.

The Supreme Court in *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961), as discussed *supra*, specifically rejected the Board’s early efforts to require all hiring halls to undertake various steps to ensure nondiscriminatory operation including the requirement that hiring hall rules be posted. As noted *supra*, Board cases following the Court’s decision have made it clear that a union need not post hiring hall rules or even reduce them to writing. All of these cases however address initial allegations of violations of the Act and do not limit remedies which are directed following the finding of a violation of the Act in a given case.

I have made extensive findings *supra* concerning my belief that Respondent has engaged in an illegal course of conduct designed to prevent, retard, discourage, and delay travelers from registering of book I of the out-of-work list. This course of conduct has included the application of illegally restrictive rules, misleading referral questionnaires as well as a consistent campaign of maintaining rules and procedures in secret and releasing little if any information respecting the application of those rules to specific group I applicants or potential applicants. Secrecy and confusion have been an important part of Respondent’s course of conduct found improper here. While the memorandum of understanding and the notice have been posted, other efforts to minimize understanding of the hiring hall’s operations continued to the time of the hearing as found *supra*.

These findings convince me that only a broad affirmative order requiring Respondent to take certain actions over a 6-month period in the operation of its hiring hall will insure that these violations will be adequately remedied. Accordingly, I shall order that Respondent take the following actions commencing on the date the notice here is posted and to continuing these actions thereafter for 6 months.

1. Respondent shall prepare a written recitation of all applicable rules, requirements, practices, and procedures respecting the operation of its hiring hall and its referral appeal committee. This compilation shall include all rules, procedures, practices, and other aspects of hiring hall operation, including the referral appeal committee proceedings, which a hiring hall user should know of in utilizing or considering utilizing Local 6's hiring hall. These written rules shall be posted in the hiring hall area in a location providing reasonable prominence and accessibility. Changes in these rules will be posted for a reasonable period before they are put into effect.

2. Respondent shall mail an appropriate number of copies of the written rules and subsequent changes to each employer with whom Local 6 has a contract to allow posting at all job locations of employers, be they willing, served by the hiring hall.

3. Respondent shall prepare copies of the written rules noted so above and shall make them available to all potential hiring hall users who request them. Sufficient copies shall be maintained in inventory so that copies are readily available. Local 6 may charge a reasonable amount not to exceed the cost of printing or duplication for requested copies of the rules. The fact of availability of copies of the rules as well as the way in which copies are to be requested shall be stated on the cover of the printed rules themselves which statement shall also be included on the face of the posted copies at Local 6's offices.

4. All questionnaires and related forms which hiring hall applicants are required to fill out shall contain a statement of the existence of and availability on request of the written rules described above.

5. All actions by Local 6 or the referral appeal committee or any other designated agent respecting determinations of eligibility of hiring hall registrants for book I shall be communicated to the applicant in writing within a reasonable period. The communication shall set forth the specific rules, practices, or procedures relied on as well as any findings of fact made and relied on respecting the determination. Each such communication shall also contain a statement that a written copy of the hiring hall rules is posted in Local 6's offices and is also available on request from Local 6.

6. All written requests for information by actual or potential hiring hall users concerning their specific circumstances will be timely answered in writing in a manner that reasonably informs the actual or potential hiring hall user of the information necessary to make informed decisions respecting use of the hall. The answers will also include notification of the existence of, posting and availability of the written rules described above.

### III. MAKE-WHOLE PROVISIONS

#### A. *The Class of Individuals Involved*

Throughout the complaint the General Counsel has alleged 8(b)(1)(A) and (2) conduct involving classes of individuals rather than a list of names of specific individuals. Thus, for example, the complaint uses the following class designations: paragraph 9(a)—“all persons using the hiring hall,” paragraph 8(b)—“travelers,” and 8(d)—“persons filing appeals.”

The General Counsel argues on brief at 120:

The General Counsel is not required at the unfair labor practice stage of these proceedings to name all of the discriminatees or to identify which discriminatees should have been entitled to particular jobs. The appropriate place to establish which individuals would have been dispatched absent Local 6's unlawful conduct is in a backpay proceeding. *Longshoremen Local 142*[6] [*Wilmington Shipping*], supra, 294 NLRB [445] (1989); *Laborers Local 158 (Contractors of Pennsylvania)*, 280 NLRB 1100, 1101 (1986); *Teamsters Local 328 (Blount Bros.)*, 274 NLRB 1053, 1060 (1985); *Laborers Local 135 (Bechtel Power)*, 271 NLRB 777, 780-781 (1984); *Plumbers Local 198 (Jacobs/Wiese)*, 268 NLRB 1312, 1319, 1323 (1984), enf. 747 F.2d 326 (5th Cir. 1984); *Operating Engineers Local 406*, supra, 262 NLRB at 51 fn. 5.

I am persuaded by the General Counsel's marshaling of authority. Thus, I find that the complaint properly utilizes “class” identification of alleged discriminatees. I further find, as the General Counsel urges, that the specification of individual discriminatees and the determination of the jobs lost by those discriminatees, if any, be deferred to the compliance stage of these proceedings.

Accordingly, I shall defer to the compliance stage of these proceedings, if necessary, the specific identification of individuals who, as a result of the violations of Section 8(b)(2) of the Act found, supra, lost employment opportunities and the specific identification of the opportunities lost.

As a result of this determination I do not address Respondent's various arguments raised on brief that particular individuals or classes of individuals are not entitled to make-whole relief. These arguments are preserved for presentation in the compliance stage as appropriate where they will receive full consideration.

#### B. *Relief to be Granted Discriminatees*

The specific discriminatees will be identified in the compliance stage of these proceedings as necessary. Once identified, what relief shall they receive?

All those individuals who would currently be placed on group I of Local 6's hiring hall out-of-work dispatch priority system, but for the violations found here, shall be reclassified, if not now, on or eligible for book I, and shall be notified in writing that this has been done.

The General Counsel seeks an order making whole any individual who lost employment opportunities as a result of Respondent's violations of Section 8(b)(2) of the Act. This is the traditional remedy in failure to dispatch cases, see, e.g., *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 427 (1984). It is also the relief directed in *Boilermakers Local 667 (Union Boiler Co.)*, 242 NLRB 1153 (1979), where a hiring hall user lost a referral opportunity when he made an uninformed and unsuccessful utilization of the referral process as a result of the union's failure to properly inform the hiring hall user of relevant hiring hall rules and practices.

Accordingly, I shall direct Respondent make whole the individuals who are determined in the compliance stage to have lost an identified job opportunity or opportunities as a result of Respondent's violations of Section 8(b)(2) of the Act. Respondent shall make these individuals whole for all

loss of wages and benefits by payment to the individuals, and the contractual fringe trusts as appropriate, all wages and contractual payments, plus appropriate penalties, due under the contract which would have been paid for the employment lost as a result of Respondent's illegal acts. Further Local 6 shall give full credit for such constructive employment under the contract in all future evaluations of these individuals' number of hours worked under the contract for purposes of hiring hall dispatch priority classification in the future.

Interim earnings shall be deducted from the backpay consistent with normal Board procedures. Backpay shall be calculated in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); see also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962). Contractual payments shall be made consistent with the Board's decision in *Merryweather Optical Co.*, 224 NLRB 1213 (1976).

#### IV. POSTING AND OTHER NOTIFICATION

Because the violations found here were directed against travelers who by definition are not members of Local 6 and because the thrust of the violations found revolve around the preservation of ignorance among travelers of Local 6's hiring hall procedures, it is especially important to ensure that travelers become aware of the violations found and the remedy directed.

Accordingly, I shall direct Local 6, in addition to the usual posting of the notice appearing in the appendix, infra, and the supplying of notices to contracting employers for posting if they desire, to mail to each and every individual who has used Local 6's hiring hall during the period at issue here, who was not then or is not now a member of Local 6, a copy of the notice here, in reduced but legible size if determined more desirable by Respondent, and a copy of the hiring hall rules as described above. Service shall be accomplished by mailing the notice and rules to the last known addresses of the individuals in question.

#### V. OTHER MATTERS

Because the specific identification of individuals who lost employment opportunities has not been concluded, I shall direct Respondent to make all relevant records and other documents of every kind available to the Regional Director or his agents for examination and copying to assist in the specification of individuals and the calculation of backpay and related make whole payments. The Regional Director shall retain his inspection rights throughout the 6-month period during which Respondent will undertake the affirmative action directed here and thereafter as appropriate to ensure that Respondent has complied with the terms of the Order.

I shall also include in the notice to hiring hall users an invitation to those who used the hiring hall during the period at issue to contact the compliance officer of Region 20 if they believe they have suffered harm as a result of the discrimination found here. Finally I shall include in the notice an announcement that the decision underlying its findings is itself available from the Board's Regional Office on request.

#### CONCLUSIONS OF LAW

On the basis of the above findings of fact and on the entire record here, I make the following

1. The employer-members of the San Francisco Electrical Contractors Association and Butcher Electric are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, AFL-CIO, Local 6, and its constituent local unions, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(1)(A) of the Act by threatening a Charging Party with death if the charge filed with the Board challenging the operation of the hiring hall was converted into a class action lawsuit.

4. Respondent breached its duty to fairly represent employees and discriminated against travelers because they were not members of Local 6, and in so doing violated Section 8(b)(1)(A) and (2) of the Act, by:

(a) Failing and refusing to provide information specifically requested by hiring hall users respecting the following rules, practices, standards, and procedures of the hiring hall:

- (i) Hiring hall users' entitlement to group I classification.
- (ii) The reasons why group I applications had been denied.
- (iii) Local 6's standards for group I.

(iv) The reasons why the referral appeal committee denied their appeals of Local 6's denial of their group I applications.

(b) Failing and refusing to make good-faith and reasonable efforts to inform potential and actual hiring hall users, including travelers who were not members of Local 6, of the rules, practices, and procedures controlling hiring hall operations including:

(i) The registration rule disallowing any group I application if the applicant was currently registered on another IBEW local union's group I list.

(ii) The referral appeal committee rule disallowing appeals if the appellant is employed in the unit.

(iii) The reasons for Local 6 denying a particular group I applicant or the referral appeal committee denying a particular appellant's appeal, in either case, at the time the application or appeal was denied.

(c) Maintaining misleading referral questionnaires which created the erroneous impression among hiring hall users including travelers who were not members of Local 6 that there were additional requirements for group I eligibility.

(d) Maintaining and enforcing its eligibility rule which denied group I status to any applicant who was also eligible to sign book I at any other IBEW Local even if the applicant had not signed any other book I in fact.

(e) By failing and refusing to allow hiring hall group I applicants, who would have been eligible for group I, but for Respondent's acts and conduct described in the subparagraphs above, to sign book I thereby causing and/or attempting to cause them to lose employment opportunities they would otherwise have obtained.

5. Respondent has not otherwise violated the Act as alleged in the complaint.

[Recommended Order omitted from publication.]