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International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO (Steel Fabricators Assoc.) and Sotero Lopez. Case 21-CB-12858

March 31, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On September 30, 2002, Administrative Law Judge William L. Schmidt issued the attached decision. The General Counsel and the Respondent filed exceptions, supporting briefs, and answering briefs. The Charging Party filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(b)(1)(A) of the Act as alleged by informing Sotero Lopez that any payment he made toward the periodic dues required under a contractual union-security clause would be applied against his fine balance until fully paid; by applying Lopez' dues payments to his outstanding fine balance rather than to his dues; by threatening Lopez that he would not be permitted to work if suspended from membership for his continued failure to pay dues; and by suspending Lopez from membership without notifying him of his rights as a nonmember under *Communications Workers of America v. Beck*, 487 U.S. 735 (1988) (*Beck*), and *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963) (*General Motors*). The judge dismissed the allegation that the Respondent violated Section 8(b)(2) by refusing to permit Lopez to register for referral from its hiring hall or to refer him for employment because he failed to pay his dues.

We agree with the judge, for reasons set forth in his decision, that the Respondent violated Section 8(b)(1)(A) when it threatened to, and later did, apply Lopez' dues payment to his fine balance, and thereafter threatened him with suspension for failing to pay his dues.¹ How-

¹ With one exception, we affirm the judge's finding that none of the complaint allegations are time-barred by Sec. 10(b). Sec. 10(b) provides, in relevant part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge." The Respondent first informed Charging Party Lopez in

ever, we reverse the judge's finding that Lopez was suspended. Consequently, we dismiss the allegation that the Respondent unlawfully failed to give Lopez notice of his *Beck* and *General Motors* rights. We also find, contrary to the judge, that the Respondent unlawfully refused to register and refer Lopez for employment.

A. *Background*

The Respondent and the other local unions that are members of the District Council of the Iron Workers of California and Vicinity operate hiring halls. The locals and employers using these hiring halls are parties to a collective-bargaining agreement that contains a union-security clause.

Lopez, a journeyman certified welder, has used the Respondent's hiring hall since he became a member of the Local in 1980. Lopez injured his back in 1996 and missed work in 1997 and 1998. He returned to work in 1999 and worked until July 1999, when he was exposed to acid fumes and became seriously ill. As a result of that exposure, he still experiences a variety of serious health problems.

A physician's disability certificate stated that Lopez was unable to work from August 10, 1999, until approximately April 3, 2000. At various points during his periods of disability, Lopez received either the Local's short term disability benefits or state disability benefits. He was on state disability in January and February of 2000, but those benefits ended in March or April of that year. In March 2000, Lopez had a pending claim for long-term, permanent disability benefits with the Union's pension fund. While he was disabled, Lopez continued to pay dues and remained a union member.

In 1996, the Respondent accused Lopez of violating a rule barring employees from registering on the out-of-work list at more than one branch office. Following in-

August 1999, more than 6 months before he filed his charge, that any dues payments he made would be applied to his outstanding fine balance. A violation based on that statement (which is not alleged to violate the Act) would be time-barred. As the judge found, however, the Respondent engaged in other unlawful conduct—reiterating that it would apply any dues payments to Lopez' fine balance (and actually doing so), and threatening to suspend him and to refuse to allow him to work if he did not pay his dues—within the 10(b) period. As we find below, the Respondent also unlawfully refused to allow Lopez to register for referrals from its exclusive hiring hall, again during the 10(b) period. These actions would be unlawful even absent the Respondent's August 1999 statement. Cf. *Machinists Local 1424 v. NLRB (Bryan Mfg. Co.)*, 362 U.S. 411, 416-419 (1960). See also *Teamsters Local 896 (Anheuser-Busch)*, 339 NLRB No. 91, slip op. at 2 (2003); *Control Services*, 305 NLRB 435 fn. 2, 442 (1991).

As discussed below, we find that the Respondent did not suspend Lopez from membership, and thus we need not decide whether it would have violated Sec. 8(b)(1)(A) as alleged by suspending him without informing him of his *Beck* and *General Motors* rights. Accordingly, we need not determine whether that allegation is barred by Sec. 10(b).

ternal union proceedings, the Respondent found Lopez guilty and fined him \$998. On appeal, the International reduced the fine to \$499. Lopez never paid the fine.

In August 1999, a union official told Lopez that the Respondent planned to collect the fine by applying his dues payments against his fine balance until he had paid the fine in full. Later in 1999, Jim Butner, the Respondent's business manager, wrote to the International Union's general secretary, James E. Cole, seeking advice about collecting the Lopez fine. By letter dated January 3, 2000, Cole advised Butner that he could apply Lopez' future dues payments against his fine balance but cautioned that if "the member goes suspended for non-payment of dues, you would still be required to allow him to use the hiring hall . . . and you should take no action with respect to denying him employment."

Later in January, Lopez went to the Respondent's office to pay his dues for November and December 1999 and January 2000.² Kim Taylor, the Respondent's office manager, informed Lopez that any money he tendered for dues would be applied against his fine balance. However, she also showed him a copy of Cole's January 3 letter and said that working would not be a problem. Lopez decided not to pay his dues. Because he lacked the dues receipt he needed to be dispatched out to work, Lopez did not register to work at that time.

About March 16, Lopez received a letter from Butner reminding him that "any payments received from you will be applied to this fine until it is paid in full."

On March 22, Lopez went back to the Respondent's office and told Monica Urrea, one of its office employees, that he wanted to pay his dues. She told him that any money he paid would be credited against his fine. Lopez tendered \$100 for his union dues. Urrea gave Lopez a receipt showing that his payment of \$100 had been applied against his fine of \$499, leaving an unpaid fine balance of \$399. The receipt also stated that his dues were still paid only through October 1999.

On April 17, Butner again wrote Lopez, pointing out that his dues had not been paid since October 1999. The letter warned, "If we do not receive a payment on or before April 30, 2000 you will go suspended from Local 433 . . . [and] if your membership goes suspended you will not be allowed to work until you have been reinstated." Lopez made no further payments to the Respondent. Instead, he filed a Board charge shortly after receiving Butner's letter.

In late July, Lopez wrote to the International regarding the inconsistency between Cole's and Butner's letters. He requested that the International compel the Respon-

dent to allow him to work. The International did not respond. However, on September 5, the Respondent's attorney advised Lopez in writing that he would be "placed in the appropriate list for dispatch purposes without regard to any fine which was imposed on you."

Lopez did not attempt to register on the Respondent's out-of-work list until November 16. He was allowed to register for work and received some referrals. He has made no further payments to the Respondent.

B. Analysis

1. The Respondent unlawfully informed Lopez that it would apply his dues payments to his fine balance

We agree with the judge, for the reasons stated in his decision, that the Respondent violated Section 8(b)(1)(A) by informing Lopez that it would apply his dues payments to his fine balance. In exceptions, the Respondent argues that the judge erred in finding this violation, because the complaint contained no such allegation. We find no merit in this argument.

It is well settled that the Board may find and remedy a violation even in the absence of a specific complaint allegation if the issue is closely connected to the subject matter of the complaint and has been fully litigated. *Pergament United Sales*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d. Cir. 1990). Both of those conditions have been met here. The complaint alleges, and the judge found, that the Respondent applied Lopez' dues to his fine balance after it refused to apply his \$100 payment to his dues. The Respondent's statements that it would take such action could hardly be more closely related to the complaint's subject matter. (The judge even stated at the hearing that he viewed the statements as encompassed by the complaint allegations.) And the issue was fully litigated. Indeed, the judge's ruling that the complaint encompassed the additional violations put the Respondent on notice that the issue would be litigated and evidence was introduced on it. In any event, the Respondent's witness, Kim Taylor, testified on direct examination that she told Lopez "that his dues would go toward his fine until the fine was paid." Without objection from the Respondent, Lopez gave similar testimony. Finally, the Respondent has not shown that it was prejudiced by the General Counsel's failure to formally allege this violation. *Baytown Sun*, 255 NLRB 154 *fn.* 1 (1981).

2. The Respondent unlawfully refused to register or refer Lopez

The judge dismissed the complaint allegation that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) by refusing to register for referral, and refer, Lopez. Thus, the judge found no evidence that Butner or any other agent of the Respondent acted on Butner's April 17

² Unless otherwise indicated, all subsequent dates refer to 2000.

threat to prevent Lopez from registering for referral or from obtaining a referral. He also found that Lopez' disability prevented him from working until at least July, and that the Respondent's counsel assured him, first in July and later in September, that he would be allowed to register. Finally, the judge found that when Lopez attempted to register in November, he was allowed to do so and actually received referrals. The General Counsel has excepted, and we find merit in the exception.

The General Counsel does not contend that an agent of the Respondent physically prevented Lopez from registering at the hiring hall or refused to refer him to jobs after he registered. Rather, the General Counsel argues that, given what Lopez had been told and what he already knew about the operations of the Respondent's hiring hall, it would have been futile for him to attempt to register. Thus, the Respondent informed Lopez repeatedly that any dues payments he attempted to make would be applied to his fine balance, and when he attempted to pay his dues in March, the payment was, in fact, credited to the fine balance instead of his dues. On April 17, Butner advised Lopez that if he did not pay his dues by April 30, he would be suspended and not allowed to work until he was reinstated.³ Moreover, as Lopez credibly testified, even if he registered, he would not have received a referral without a paid-up dues receipt, which he could not produce as long as the Respondent was unlawfully applying his dues payments to his fine balance. Not until September 5, when the Respondent's counsel assured him that he would be allowed to register for referrals, did Lopez have any reason to believe that there was any point in his attempting to register.⁴ We agree with the General Counsel that, under these circumstances, it is irrelevant that Lopez did not attempt to register for referrals, at least before September 5, because any such attempt would have been futile. *Iron Workers Local 377 (M.S.B., Inc.)*, 299 NLRB 680, 684 (1990); *Laborers*

³ Although Lopez was shown Cole's letter directing the Respondent to allow Lopez to work even if it applied his dues payments to his fine balance, Butner's April 17 letter to Lopez demonstrated that the Respondent did not intend to follow that direction. Moreover, when Lopez wrote to the International Union asking it to instruct the Respondent to allow him to work, he received no answer.

⁴ Lopez excepted to the judge's finding that he admitted that the Respondent's counsel provided him with a verbal assurance in July that he would be permitted to register for referral. Contrary to the judge's finding, there is no evidence that the Respondent's counsel gave Lopez such an assurance in July, or at any time prior to September 5.

Unlike the judge, we are not persuaded, by the mere fact that Lopez was allowed to register in November, that he would have received the same treatment before September 5. Until that date, the Respondent had unequivocally informed Lopez that he would not be allowed to work because he had not paid his dues, and we find nothing in this record that might reasonably have caused Lopez to doubt that the Respondent meant what it said.

Local 1440, 233 NLRB 1366, 1370 (1977). Accordingly, we find that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) by preventing Lopez from registering for and receiving referrals from its hiring hall from April 30⁵ until September 5.⁶

Lopez' prolonged period of disability does not require a different result. Contrary to the judge's finding, there is no evidence that Lopez was unable to work at his trade until July, or, indeed, at any time after April 2000, the last dated covered by his physician's certificate. He ceased receiving state disability payments by March or April of that year. The judge found that Lopez "admittedly remained in a disabled status apparently unable to work at least until July." That finding is inconsistent with Lopez's testimony. Although Lopez admitted that he had a variety of physical problems and a pending claim for permanent disability with the Union's pension fund in July 2000,⁷ he testified that he could have taken a job at that time and "they would have torn [up] that disability." Because Lopez gave uncontradicted testimony that it was the Respondent's refusal to register and refer him—not his physical problems or disability claim—that prevented him from working, we reject the judge's finding that Lopez was unable to work because of his claimed disability until July.

3. There is no evidence that Lopez was suspended

The judge found that the Respondent suspended Lopez from membership on April 30. In exceptions, the Respondent argues that there is no evidence that Lopez was suspended. We agree.

In his April 17 letter, Butner threatened to suspend Lopez if he did not pay his dues by April 30. However, there is no evidence that Lopez was actually suspended. Indeed, the General Counsel argues only that, given Butner's threat, "It is reasonable to conclude that when April 30th came and went, and Lopez did not make a union-dues payment, Respondent considered him suspended." In the absence of any other record evidence that Lopez was actually suspended, we agree with the Respondent

⁵ April 30 is the date on which the complaint alleges that this violation commenced.

⁶ For the reasons discussed below, we find no evidence that Lopez was actually suspended from membership, as Butner had threatened. That does not change our finding that it would have been futile for Lopez to attempt to register for referrals.

⁷ That Lopez had a pending disability claim does not mean that he was unable to work. Even if Lopez had received disability benefits from the Union's benefits funds, that fact would not establish prima facie that he was ineligible for backpay. See *Performance Friction Corp.*, 335 NLRB 1117, 1120 (2001) (holding that the employee's inability to perform his past or similar work, not his receipt of disability benefits, tolled his backpay); see also *Superior Export Packing*, 299 NLRB 61 fn. 2 (1990).

that an inference of suspension is unwarranted and shall dismiss this allegation.⁸

4. Because there is no evidence that Lopez was suspended, no *Beck/General Motors* notice issue arose

Because there is no evidence that Lopez was suspended, we need not reach the issue of whether a suspended worker must be notified of his *Beck* and *General Motors* rights. We therefore dismiss the allegation that the Respondent unlawfully deprived Lopez of those rights.⁹

AMENDED REMEDY

We shall modify the judge's remedy as follows:

Having found that Lopez was not suspended by the Respondent, we shall not require that the Respondent notify him of his *Beck* and *General Motors* rights. Having found that the Respondent violated the Act by refusing to register and refer Lopez from April 30 to September 5, 2000, we shall order it to make him whole for any loss of earnings he may have suffered as a result of the Respondent's unlawful conduct, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The Respondent, International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

a. Informing employee-members that any payments tendered to Local 433 to satisfy the initiation fees and periodic dues required under the union-security clause of the California-Southern Nevada Iron Worker Agreement will be applied to satisfy an outstanding fine balance until fully paid.

b. Applying the moneys tendered by employee-members to Local 433 in payment of the dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement to an outstanding fine balance.

c. Threatening employee-members that they will be suspended from membership and not permitted to work under the California-Southern Nevada Iron Worker Agreement for failing to pay dues and fees required under that agreement's union-security clause after misallocating dues payments to an outstanding fine balance.

d. Failing and refusing to register for referral or to refer for employment employee-members because the Respondent has misallocated their dues payments under the union-security clause of the California-Southern Nevada Iron Worker Agreement to pay off their fine balance.

e. 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. Within 14 days from the date of this Order, credit Sotero Lopez' payment to Local 433 on March 22, 2000, to those dues and fees collectible under the union-security clause of the California-Southern Nevada Iron Worker Agreement, debit his fine balance by an equal amount, and issue an official receipt to him reflecting this action.

b. Within 14 days from the date of this Order, remove from its files any reference to any failure by employee-member Sotero Lopez to pay dues which arose from the Respondent's misallocation of his dues payments to his outstanding fine balance, and within 3 days thereafter notify him in writing that this has been done and that the information will not be used against him in any way.

c. Make Sotero Lopez whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

d. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

e. Within 14 days after service by the Region, post at each of its Southern California and Nevada hiring halls copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by

⁸ See, e.g., *Howard Electrical & Mechanical*, 293 NLRB 472 fn. 2 (1989), enf. mem. 931 F. 2d. 63 (10th Cir. 1991).

⁹ We note that the General Counsel does not contend that there was a total failure to apprise Lopez of his *Beck* and *General Motors* rights; the contention is only that the Respondent Union had a special obligation to apprise him of these rights after the alleged suspension.

¹⁰ 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."

the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

f. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

Dated, Washington, D.C., March 31, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for our benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT inform employee-members that any payments tendered to satisfy the periodic dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement will be applied first to satisfy an outstanding fine balance until it is fully paid.

WE WILL NOT apply moneys tendered by employee-members in payment of the dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement to an outstanding fine balance.

WE WILL NOT threaten employee-members that they will be suspended from membership and not permitted to work under the California-Southern Nevada Iron Worker Agreement for failing to pay dues and fees required under that agreement's union-security clause after misallocating dues payments to an outstanding fine balance.

WE WILL NOT fail and refuse to register for referral or to refer employee-members because we have misallocated their dues payments under the union-security clause of the California-Southern Nevada Iron Worker Agreement to pay off their fine balance.

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

WE WILL make Sotero Lopez whole for any loss of earnings and other benefits resulting from the discrimination against him, less any net interim earnings, plus interest.

WE WILL credit Sotero Lopez' March 22, 2000, dues payment to those dues and fees collectible under the union-security clause of the California-Southern Nevada Iron Worker Agreement, debit his fine balance by an equal amount, and issue an official receipt to him reflecting this action.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to any failure by employee-member Sotero Lopez to pay dues which arose from our misallocation of his dues payments to his outstanding fine balance, and within 3 days thereafter notify him in writing that this has been done and that the information will not be used against him in any way.

WE WILL make Sotero Lopez whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the Board's decision.

LOCAL 433, INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND ORNAMENTAL IRON
WORKERS, AFL-CIO

Sonia Sanchez and Robert MacKay, Attys., for the General Counsel.

David L. Rosenfeld, Atty. (Van Bourg, Weinberg, Roger & Rosenfeld, P.C.), of Oakland, California, for Respondent.
Sotero Lopez, pro se.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. On November 8, 2000, the Regional Director for Region 21 issued a complaint and notice of hearing alleging International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO (Respondent, Local 433, or the Union) violated Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations

Act (the Act). The complaint is based on a charge Sotero Lopez (Lopez) filed on April 28, 2000,¹ and amended on July 7, and again on October 11. As amended at the hearing, the complaint presents the following issues for resolution: (1) Did Local 433 insist unlawfully upon allocating the dues Lopez offered to pay January and March against his 1996 fine; (2) Did Local 433 unlawfully refuse to register or refer Lopez from its exclusive hiring hall after suspending him from membership on April 30; and (3) After suspending Lopez from membership, did Local 433 breach its duty of fair representation by failing to inform him of his membership and dues options under *General Motors* and *Beck*.²

I heard this case in Los Angeles, California, on June 24, 2002. Having now carefully considered the record and the demeanor of the witnesses,³ and after considering the briefs filed by the General Counsel, Lopez, and Local 433, I find the General Counsel prevailed on the first and third issues, above, but did not prevail on the second issue based on the following

FINDINGS OF FACT

I. JURISDICTION

The District Council of Ironworkers of the State of California acting on behalf of Respondent and other local unions affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers negotiates and executes collective-bargaining agreements with various employer associations and contractors, including the Steel Fabricators Association (SFA), the Building Industry Association of Southern California, Inc. (BIASC), the Southern California Contractors Association, Inc. (SCCA), Bragg, Crane and Rigging Company (BCR), and the Western Steel Council, Inc (WSC). The employer-members of SFA, BIASC, SCCA, and WSC as well as BCR each provide services valued in excess to \$50,000 to customers in the State of California each of whom in turn annually purchase and receive goods valued in excess of \$50,000, directly from suppliers located outside the State of California. Accordingly, I find the above-named employer-associations and BCR to be employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act. The Union is aligned with the named statutory employers through a multistate collective-bargaining agreement titled: Iron Worker Employers State of California and a Portion of Nevada and District Council of Iron Workers of the State of California and Vicinity [California-Southern Nevada Agreement]. Accordingly, I find that it would effectuate the purposes of the Act for the Board to exercise its jurisdiction to decide this dispute.

¹ Unless shown otherwise, all further dates refer to the 2000 calendar year.

² *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963); *Communications Workers v. Beck*, 487 U.S. 735 (1988).

³ My findings reflect credibility resolutions based on factors cited by Judge Medina in *U.S. v. Foster*, 9 F.R.D. 367, 388-390 (1949). Testimony inconsistent with my findings is not credited.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Relevant Facts

The collective-bargaining agreement involved here that applies to the employees employed by the employer-members of the associations mentioned above provides for the operation of an exclusive hiring hall and details a number of rules and procedures governing the hiring hall operation. Officials of Local 433 and the other local unions comprising the District Council oversee the hiring hall operations at their respective locals. Pursuant to this contractual arrangement, Local 433 maintains an out-of-work register at each of its branch offices.

The California-Southern Nevada Agreement also contains a standard, construction industry union-security clause. It requires as a condition of employment that employees who were union members and employed under the agreement on its effective remain members in good standing. All others who become employed under the agreement must “on or after eight (8) continuous or accumulative days of employment on such work with any individual employer following the beginning of such employment or the effective date of the [Agreement], whichever is later” become a member of the local union having jurisdiction over the territory where the employee is employed and thereafter remain a member in good standing. Jt. Exh. 1, pp. 6-7 (sec. 4 A). By the terms of the union-security clause, an employer may not terminate an employee for noncompliance with its requirements until it receives a “written request from the District Council . . . or Local Union . . . stating all pertinent facts. . . .” Jt. Exh. 1, p. 7 (sec. 4 B).

Lopez, a certified welder, became a member of Local 433 in 1980 and remained a member at all times until Local 433 suspended his membership in April 2000, ostensibly because his dues became 6 months past due. Over the years, he regularly sought work in his trade by registering for referral on the Union’s out-of-work list. In recent years, however, Lopez has suffered from significant work injuries that resulted in lengthy periods of disability. The first occurred in June or July 1996 when a back injury left him unable to work again until November 1998. The second occurred in July 1999 when he became seriously ill after exposure to acid fumes. This disability period lasted until July 2000 or longer.

At some time in 1996, local union officials initiated internal union charges against Lopez claiming that he violated the contractual rule barring employees from registering on the out-of-work list at more than one branch office. See Jt. Exh. 1, p. 12 (sec. 5 H-2). Following internal union proceedings, Local 433 found Lopez guilty and imposed a \$998 fine against him. When Lopez appealed this action, the International Union affirmed the local union’s findings and conclusions but reduced Lopez’ fine to \$499. Over the next three years, Lopez apparently ignored Local 433’s efforts to collect the fine. However, he otherwise maintained his membership in good standing by paying the regular periodic dues and fees assessed against all members, usually in person at the union’s office. In addition, he continued to obtain work when not disabled through the Local 433’s hiring hall.

Although the full scope of Local 433’s efforts to collect his fine are not fully known, Lopez acknowledged that in August

1999 some unspecified union official told him that Local 433 planned to collect the fine by applying his dues payments against his fine balance until paid in full. Later in 1999, Jim Butner, Local 433's business manager, wrote to General Secretary James E. Cole seeking advice about collecting the Lopez fine. Cole responded in a January 3 letter advising Butner that he could apply Lopez' future dues payments against his fine balance but cautioned that if "the member goes suspended for non-payment of dues, you would still be required to allow him to use the hiring hall . . . and you should take no action with respect to denying him employment."

Later in January, Lopez went to Local 433's office intent upon paying his dues as his last payment only covered the period through October 1999. On this occasion, Kim Taylor, Local 433's office manager, advised Lopez that any money he tendered would be applied against his fine balance. When Lopez protested that he would not be able to work, Taylor presented a copy of Cole's letter and assured him that working would not be a problem. At Lopez' request, Taylor provided with a copy of Cole's January 3 letter. Lopez then left without making any payment.

Thereafter, Butner wrote to Lopez on March 16. In this letter, Butner reminded Lopez that "[a]s you have been previously informed, any payments received from you will be applied to this fine until it is paid in full." This prompted Lopez to visit the union's office again on March 22 to pay his dues. Monica Urrea, one of the Union's office employees, dealt with Lopez. Although Lopez told Urrea that he wanted to pay his dues, she told him any money he paid would be credited against the fine. Lopez protested but finally tendered \$100 saying that it was for his union dues and that whatever she did with the money was her business. Urrea took the money and provided Lopez with a receipt showing that his payment had been applied against his fine leaving an unpaid fine balance of \$399. That receipt also prominently reflected that his dues were still paid only through October 1999.⁴

On April 17, Butner wrote Lopez calling attention to the fact that his membership dues had not been paid since October 1999. The letter states: "If we do not receive a payment on or before April 30, 2000 you will go suspended from Local 433." The letter further warns: "[I]f your membership goes suspended you will not be allowed to work until you have been reinstated." Lopez made no further payments to Local 433; instead, he filed this charge shortly after receiving Butner's April 17 letter. On April 30, Local 433 suspended Lopez' membership.

In late July, Lopez wrote to the International Union enclosing Cole's January 3 letter and Butner's April 17 letter, and calling attention to the obvious inconsistency as to whether he would be "allowed to work" following his membership suspension. He asked that the International Union assist him by compelling Local 433 officials to allow him to work. So far as is known, no International Union official responded. However, Lopez admitted that Local 433's attorney advised him in July

that he would be permitted to work even though suspended from membership. Later, Local 433's attorney sent Lopez a letter dated September 5 stating that if he desired to work he would be "placed in the appropriate list for dispatch purposes without regard to any fine which was imposed on you." As for Butner's April 17 letter, the attorney noted that the letter advised Lopez "that you had not paid membership dues which are required to be kept current under the terms of the Union's Security Provision of the contract" and that "[t]he Union will apply that provision to the extent permitted by law."

Lopez never worked during the 2000 calendar year. He did not attempt to register on a Local 433 out-of-work list until November 16. At that time, Jack Holt, Local 433's new business manager, permitted him to register only on the "E-list," the lowest category of registrants, assertedly because he had insufficient recent work experience to qualify for registration on any higher list.⁵ Lopez subsequently convinced Holt in August 2001 that he should be permitted to register of the A-1 list, the highest category of contractual registrants. Since registering, Lopez has received some referrals but has made no further payments to Local 433.

B. Argument and Conclusions

The General Counsel claims that Respondent adopted a de facto policy of collecting dues before fines by thrice telling Lopez, per Cole's January 3 "instructions," that any future dues payments from him would be applied against his 1996 fine. Pointing to a variety of Board decisions finding different sorts of union rules establishing a fines-first scheme unlawful where co-extensive with a contractual union-security clause, the General Counsel contends that this conduct violated 8(b)(1)(A). The General Counsel also contends that Local 433 also violated 8(b)(1)(A) by actually crediting Lopez' \$100 dues payment on March 22 against his fine balance. The General Counsel further argues that Local 433 violated Section 8(b)(1)(A) and 8(b)(2) by Butner's written threat to Lopez of April 17 that he could not work if he did not pay his dues violated Section 8(b)(1)(A), and that this threat coupled with the actual suspension on April 30 effectively constituted a refusal to register and refer Lopez in violation of Section 8(b)(2). Finally, the General Counsel contends that Local 433 violated 8(b)(1)(A) when it suspended Lopez from membership without providing him with a notice of employee rights that have evolved out of *General Motors and Beck*.

Local 433 claims that it did not violate the Act by crediting the moneys tendered by Lopez to his outstanding 1996 fine for two reasons. First, Local 433 argues that Section 10(b) bars the complaint allegation that its allocation of the Lopez' March payment to the fine balance violated the Act because Lopez learned in August 1999 that Respondent planned to credit his dues payments against his fine balance. Second, Local 433 argues that Cole's letter to Butner cautioning against barring Lopez from registering for referral on the out-of-work list or depriving him of employment distinguishes Lopez' situation

⁴ The portion of the receipt showing the status of his dues payments is enclosed in a computer-generated box in the middle part of the upper third of the document.

⁵ Local 433's counsel asserted without contradiction at the hearing that the General Counsel declined to proceed on a separate unfair labor practice charge Lopez filed concerning his placement on the out-of-work list.

from that found in *Elevator Constructors Local 8 (San Francisco Elevator)*, 243 NLRB 53 (1979), and its progeny. Local 433 also claims that it never refused to refer Lopez because of the dues/fine issue and, in any event, Section 10(b) also bars that allegation. As for the obvious conflict between Cole's letter and Butner's April 17 letter, Respondent contends that Lopez could easily have learned that Butner did not mean what he said in his letter had he made the slightest effort to ask Butner for a clarification of the apparent conflict. Lopez did not do so, Respondent contends, because he had been placed on disability and not intended to register on the Union's out-of-work lists at that time. Finally, Respondent contends that it had no duty to provide Lopez with specific notice of rights under *General Motors* or *Beck* because Lopez has always insisted upon continuing his 20-year old union membership.⁶

I agree with the General Counsel that Respondent violated Section 8(b)(1)(A) by telling Lopez that his dues payments would be applied to satisfy his fine. In reaching this conclusion, I reject Respondent's claim that Cole's January 3 advisory letter distinguishes this situation from *San Francisco Elevator*, *id.* and similar cases cited by the General Counsel. In my judgment, Respondent had the burden of proving that it lawfully maintained a concurrent fine-first rule side-by-side with a union-security clause. Although probably well intentioned, Cole's letter alone is insufficient to meet that burden. Butner's April 17 letter, most likely a form letter Local 433 sends to any member whose dues become seriously past due,⁷ illustrates the virtually impossible task this Respondent or any other labor organization would have in attempting to dance on the lawful side of the line by adopting a fine-first rule in the context of a union-security clause. As applied to Lopez, of course, the essence of the Respondent's fine-first rule would mean that his dues would never be fully paid until he knuckled under by paying the fine.

In reality, Respondent would have an arduous, time-consuming oversight task to deal with a member such as Lopez' in order to insure he suffered no adverse employment impact from the application of a fine-first rule. Employee-members who work under agreements such as the one involved here encounter periodic, lawful demands that they document their eligibility for employment under the membership maintenance requirements of the collective-bargaining agreement. In his testimony, Lopez repeatedly and credibly protested that he could not even obtain a referral ticket without showing the hiring hall agent a paid-up dues receipt. Although this hurdle might be cured with a simple direction to the hiring hall agent, Respondent does not fully control every possible source that could potentially disrupt Lopez employment under the Califor-

nia-Southern Nevada Agreement. Thus, this collective-bargaining agreement provides for the employer-transfer of employees to other local union jurisdictions and requires the employee-member to notify a sister local when transferred to its jurisdiction. It would be reasonable to presume that agents of the sister local at some point would also insist on proof of work eligibility in the form of a paid-up dues receipt. In addition, as illustrated in a case the General Counsel cites, *Iron Workers Local 377 (M.S.B., Inc.)*, 299 NLRB 680 (1990), job stewards have occasion from time-to-time to demand evidence of work eligibility in the form of a paid-up dues receipt. Hence, in order for Respondent to maintain a sanitized fine-first rule, it would have to be vigilant that of all the various union officials Lopez might possibly encounter while seeking or engaging in his trade under the contract understood and agreed not to interfere with his employment. Such an expectation is, at best, an illusion. As noted, even Respondent's own business manager, within 3 months of Cole's cautionary advice specifically addressed to him, threatened Lopez' employment prospects. Furthermore, I find the verbal assurances he received from the union's two clerical employees that he could register for referral, and be referred, insufficient to overcome the contractual and cultural obstacles Lopez would likely face when seeking employment without written proof of compliance with the union-security clause.

In addition I agree with General Counsel's claim that Respondent violated the Act by actually crediting Lopez' \$100 dues payment on March 22 against the fine balance rather than against his dues as requested when he submitted the payment. *Iron Workers Local 377*, *supra*, citing *Bay Counties District Council of Carpenters*, 145 NLRB 1775 (1964). For reasons addressed above, Cole's advisory letter is insufficient to shield Lopez from the far reaching impact of an institutional culture resulting from Local 433's historical hiring hall practice that required the production of a paid-up dues receipt from long-term employees in order to obtain a job-referral ticket. By crediting the March 22 dues payment against the fine balance, Respondent deprived Lopez of the necessary dues receipt that would fully facilitate his referral and employment. I find that by this separate conduct Respondent put Lopez' further employment through the hiring hall in peril and thereby restrained him within the meaning of Section 8(b)(1)(A).

However, the General Counsel's claim that Respondent actually refused to register and refer Lopez as alleged in complaint paragraph 22(e) is another matter. In support of this allegation, General Counsel relies solely on the threat made by Butner in his April 17 letter. Although I find Butner's threat unlawful, the evidence is insufficient to establish that Butner or any other Local 433 agent acted on that threat to prevent Lopez from actually registering for referral or from actually obtaining a referral. On the contrary, Lopez admittedly remained in a disabled status apparently unable to work at least until July. Furthermore, he admitted that Respondent's counsel provided him with a verbal assurance in July that he would be permitted to register for referral and gave him a written assurance to that same effect in September. When Lopez finally attempted to register for referral in November, he was permitted to do so. In addition, sparse as it is, the evidence available shows that Lo-

⁶ I reject and do not further consider Respondent's claims concerning the application of 10(b) to this case. Even though it may have told Lopez that his dues would be applied to his fine more than 6 months before actually doing so, a separate violation occurred when it actually took that step in March. Plainly, the charge was timely filed as to this allegation. As I have found in agreement with Respondent that it never actually refused to refer Lopez, I find it unnecessary to consider its puzzling 10(b) argument concerning this allegation.

⁷ In fact, Respondent's counsel described the April 17 letter as a "form" letter in the course of argument at the hearing.

pez was referred for employment at some point after he finally registered on the out-of-work list. For the foregoing reasons, I conclude that General Counsel failed to prove complaint paragraph 22(e) by a preponderance of the credible evidence and, hence, I recommend dismissal of this allegation.

General Counsel contends, in effect, that a suspension or expulsion of a worker from membership, made contractually mandatory for work purposes, triggers an obligation that the union taking such action provide the employee with a notice of the options available under *General Motors* and *Beck*. In complaint paragraph 22(g), the General Counsel claims that the content of that notice include a statement that: (1) he had the right to be or remain a nonmember; (2) that he had a right as a nonmember to object to paying for nonrepresentational activities and to obtain a reduction in fees for such nonrepresentational activities; (3) that he had a right to be given sufficient information to enable him to intelligently decide whether to object; and (4) that he had a right as a nonmember to be apprised of any internal union procedures for filing objections to the fee imposed. I agree with the contention that a notice of right must be given and with most, but not all, of General Counsel's contentions as to the substance.

General Counsel cites no case directly on point and I have been unable to locate precise precedent concerning the content of a *General Motors/Beck* notice required when a labor organization suspends or expels a long-term union member from membership for reasons other than failing to pay mandatory dues and fees as is the case here. In her brief, counsel for the General Counsel argues that in the absence of a *Beck* notice, a union may not lawfully seek the discharge of an employee, whether a member or a nonmember, for failing to pay the requisite dues and fees under a union-security agreement. In support, she cites *Rochester Mfg. Co.*, 323 NLRB 260 (1997), affd. 194 F.3d 1311 (6th Cir. 1999); and *Production Workers Local 707 (Mayo Leasing Co.)*, 322 NLRB 260 (1997), affd. 194 F.3d 1311 (6th Cir. 1999). Although these cases provide pertinent direction, they do not address the particular fact situation found here.

California Saw & Knife Works, 320 NLRB 224, 230 (1995), holds generally "that a union's obligations under *Beck* are to be measured by [the duty of fair representation] standard." It and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), a companion case decided the same day as *California Saw*, established an "inextricable link" between *General Motors* and *Beck* rights in that without exercising the former, the latter never come into play. However, in this case Lopez eschewed the exercise of his *General Motors* rights. Instead, Local 433 effectively altered his status to that of a nonmember against his will. For reasons explained below, I find that where a labor organization acts to suspend or expel a long-term member, its duty of fair representation (DFR) obligations require a *General Motors/Beck* notice but one more carefully tailored to fit situation than that advanced by the General Counsel.

When the Board considered the specific allegations of the *California Saw* complaint, it noted that the General Counsel claimed that the International Association of Machinists and Aerospace Workers (IAM) violated the Act by failing to place

some kind of an alert on the cover of the union magazine issue where it annually published a statement of its *Beck* policy. The General Counsel also alleged that the IAM unlawfully failed to issue an additional *Beck* notice—apart from the annual publication—that pertained to "two subgroups of non-member employees: (1) newly hired nonmember employees at the time they are hired into the bargaining unit; and (2) to newly resigned nonmember employees when they resign their union membership."

As to employees in the first subgroup, the Board found that a union has a DFR obligation to furnish those individuals with a *Beck* notice before they become subject to obligations under a union-security clause. Undoubtedly the Board felt there would be a strong likelihood that employees in this category would not have had an opportunity to see the union's annually published policy statement. However, as to the second subgroup—those employees who recently resigned their union membership—the Board found that a union has no DFR obligation "to issue an *additional* notice of *Beck* rights to new non-member employees at the time they resign their union membership." [Emphasis mine] In the following paragraph, the Board became more specific by stating that the IAM had a DFR obligation to give a *Beck* notice to "currently employed employees at the time they become nonmembers if these currently employed employees have not been sent a copy of [the monthly Machinist's magazine containing the IAM's *Beck* policy statement]." 320 NLRB 231.

I find a union's DFR obligation to provide a *General Motors/Beck* notice to recently expelled or suspended member-employees at the very least parallels the obligation found applicable to newly resigned members in *California Saw*. Having reached this conclusion, Respondent was obliged to show either: (1) that it regularly publishes a lawful statement of its *General Motors/Beck* policy by a means that made it available to its membership-at-large including Lopez; or (2) that it provided a separate, lawful *General Motors/Beck* policy statement to Lopez at or near the time of his suspension or expulsion.

Respondent did neither. Although its counsel quizzed Lopez concerning various union publications, no proof was ever submitted that Respondent regularly publishes a widely distributed notice to its members concerning their *General Motors/Beck* rights. Likewise, Respondent provided no evidence contradicting Lopez' claim that he never received a DFR-type notice around the time of his membership suspension on April 30. Accordingly, I find generally that Respondent violated the Act by its failure to give Lopez a proper *General Motors/Beck* notice when it suspended his membership.

However, I do not entirely agree with the General Counsel concerning the substance of a DFR notice required of a labor organization where, as here, it suspends a member for reasons other than the failure to pay the fees mandated in the second proviso of Section 8(a)(3). As shown in complaint paragraph 22 (g)(i),⁸ the General Counsel believes that Lopez should have been told that he had "the right to be or remain a nonmember,"

⁸ When the complaint issued, the referenced subparagraph was numbered 22(h)(i). At the hearing, a subparagraph was added to complaint paragraph 22 so that the referenced subparagraph became 22(g)(i).

the standard *General Motors* notice that would be apt before a union imposes union-security obligations on a new employee. However, requiring a labor organization to give a DFR notice to that effect to a long-term member about to be involuntarily banished would be irrelevant and inappropriate. Where a labor organization expels or suspends an employee from membership, the employee ceases to have a choice about membership options. Informing such a person that he/she has a right to be or remain a nonmember can easily be characterized as information hardly worth knowing. I find no rational purpose relevant to the Act that would be served by elevating such a notice in a situation such as this to the level of a DFR obligation.

Instead, the more appropriate DFR notice in this type of case should draw its essence from the situation and the Supreme Court's core observation in *General Motors* concerning the degree to which the law permits union membership to impact on an employee's employment. "It is permissible to condition employment upon membership," Justice White wrote for the Court, "but membership, insofar as it has significance to employment rights, may in turn be conditioned *only* upon payment of fees and dues [specified in Section 8(a)(3)]." 373 U.S. 742. [Emphasis mine.] Applying this principle here, I find Local 433 forfeited its right to affect Lopez' employment under the contractual union-security clause when it unlawfully misallocated his dues payment to his fine balance and then suspended him from membership for failing to pay his dues. In this Catch 22-like situation, the more appropriate DFR notice should address the highly significant question Lopez or any other similarly situated employee would likely have concerning their continued employment through the union hiring hall and under the union-security clause.

Based on the foregoing rationale, I find that at or about the time Respondent suspended Lopez' membership, it had a DFR obligation under the *General Motors/Beck* principles to inform him: (1) that as a nonmember he could continue to register for referral at the hiring hall and be referred for employment under California-Southern Nevada Agreement the so long as he continued to pay the dues and fees lawfully required of all others under the agreement's union-security clause; (2) that if he objected paying (through his dues payments) for union activities other than collective bargaining, contract administration, or grievance adjustment, he could obtain a prorated reduction in the mandatory union-security fee for amounts spent by the union on all other activities; (3) that he had a right to sufficient information that would enable him to intelligently decide whether to object to paying for union activities other than collective bargaining, contract administration, or grievance adjustment; and (4) that he had a right to be apprised of the union's procedures for objecting to the union-security fee imposed if he declined to pay for union activities other than collective bargaining, contract administration, or grievance adjustment. Because Local 433 failed to provide this or any other type of DFR notice to Lopez when it suspended his membership, I conclude that it violated Section 8(b)(1)(A).

CONCLUSIONS OF LAW

1. Local 433 is a labor organization within the meaning of Section 2(5) of the Act.

2. Local 433 engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) by informing Lopez in January and March 2000 that any payment made by him toward the periodic dues required under the union-security clause of the California-Southern Nevada Iron Worker Agreement would be applied against his fine balance until fully paid; by applying the payment tendered by Lopez on March 22 to his outstanding fine balance rather than to the amount due under the union-security clause of the California-Nevada Iron Worker Agreement; by threatening Lopez in an April 17 letter that he would not be permitted to work under the California-Southern Nevada Iron Worker Agreement if suspended from membership for his continued failure to pay the dues required by that agreement's union-security clause; and by suspending Lopez from membership on April 30 without providing him with a notice of his employment rights as a nonmember.

3. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The General Counsel failed to sustain its burden of proving that Local 433 failed and refused to permit Lopez to register for referral or to refer Lopez for employment under the California-Southern Nevada Iron Worker Agreement.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As I have concluded that Respondent misappropriated the dues payment made by Lopez on March 22, my recommended order also requires Respondent to restore the status quo ante by crediting that payment to those dues and fees collectable under the union-security clause of the California-Southern Nevada Iron Worker Agreement, to debit his fine balance by an equal amount, and to issue an official union receipt reflecting this action. Respondent also will be required to provide Lopez with a written assurance of his employment rights under the California-Southern Nevada Iron Worker Agreement as detailed above.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Local 433 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

a. Informing employee-members that any payments tendered to Local 433 to satisfy the initiation fees and periodic dues required under the union-security clause of the California-Southern Nevada Iron Worker Agreement will be applied to satisfy an outstanding fine balance until fully paid.

⁹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

b. Applying the monies tendered by employee-members to Local 433 in payment of the dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement to an outstanding fine balance.

c. Threatening employee-members that they suspended from membership and not permitted to work under the California-Southern Nevada Iron Worker Agreement for failing to pay dues and fees required under that agreement's union-security clause after misallocating dues payments to an outstanding fine balance.

d. Suspending any member employed under the California-Southern Nevada Iron Worker Agreement from membership in Local 433 after misallocating that employee's union-security dues payments without informing the employee of his/her continued employment rights under that agreement.

e. 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. Within 14 days from the date of this Order, credit Sotero Lopez' payment to Local 433 on March 22, 2000, to those dues and fees collectable under the union-security clause of the California-Southern Nevada Iron Worker Agreement, debit his fine balance by an equal amount, and issue an official receipt to him reflecting this action.

b. Within 14 days from the date of this Order, notify Sotero Lopez in writing that:

(1) Local 433 will insure that as a nonmember he may continue to register for referral and be referred for employment under the California-Southern Nevada Iron Worker Agreement so long as the he pays the dues and fees required under the union-security clause of that agreement;

(2) If he objects to paying for the cost of union activities other than collective bargaining, contract administration, or grievance adjustment, he may obtain a pro-rated reduction in the mandatory union-security fee for amounts spent by the union on all other activities;

(3) Local 433 will promptly provide him with sufficient information to enable the him to intelligently decide whether to object to paying for union activities other than collective bargaining, contract administration, or grievance adjustment; and

(4) Local 433 will apprise him of the union's procedures for objecting to the amount of the union-security fee imposed if he elects to decline to pay for union activities other than collective bargaining, contract administration, or grievance adjustment.

c. Within 14 days after service by the Region, post at each of its Southern California and Nevada hiring halls copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on

forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the operations involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all hiring hall registrants at any time since April 28, 2000.

d. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

Dated: September 30, 2002

APPENDIX

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

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT inform employees that any payments tendered to satisfy the periodic dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement will be applied first to satisfy an outstanding fine balance until it is fully paid.

WE WILL NOT apply moneys tendered by employee-members in payment of the dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement to an outstanding fine balance.

WE WILL NOT threaten employees suspended from union membership because we misallocated their dues payments to pay off a fine balance that they will not be permitted to work under the California-Southern Nevada Iron Worker Agreement.

WE WILL NOT suspend members employed under the California-Southern Nevada Iron Worker Agreement from membership in Local 433 after misallocating their dues payments without providing them with written notice of their legal employment rights as nonmembers.

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

WE WILL credit Sotero Lopez' March 22, 2000, dues payment to those dues and fees collectable under the union-security clause of the California-Southern Nevada Iron Worker Agree-

¹⁰ 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."

ment, debit his fine balance by an equal amount, and issue an official receipt to him reflecting this action.

WE WILL notify Sotero Lopez in writing of his continued employment rights under the California-Southern Nevada Iron Worker Agreement as follows:

(1) Local 433 will insure that as a nonmember he may continue to register for referral and be referred for employment under the California-Southern Nevada Iron Worker Agreement so long as the he pays the dues and fees required under the union-security clause of that agreement;

(2) If he objects to paying for the cost of union activities other than collective bargaining, contract administration, or grievance adjustment, he may obtain a prorated re-

duction in the mandatory union-security fee for amounts spent by the union on all other activities;

(3) Local 433 will promptly provide him with sufficient information to enable the him to intelligently decide whether to object to paying for union activities other than collective bargaining, contract administration, or grievance adjustment; and

(4) Local 433 will apprise him of the union's procedures for objecting to the amount of the union-security fee imposed if he elects to decline to pay for union activities other than collective bargaining, contract administration, or grievance adjustment.

LOCAL 433, INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS,
AFL-CIO