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United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 32 (Anthony Construction Co., Inc.) *and* William Stone. Case 19–CB–9181

April 28, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On December 9, 2005, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Association of Journeymen and Apprenticed of the Plumbing and Pipefitting Industry of the United States and Canada, Local 32, Tacoma, Washington, its officers, agents, and representatives shall take the action set forth in the Order.

Dated, Washington, D.C. April 28, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Susannah C. Merritt, Esq. and *Irene Botero, Esq.* for the General Counsel.

Richard H. Robblee and *Jacob H. Black (Rhinehart & Robblee),* of Seattle, Washington, for the Respondent.

Michael J. Davis, Esq. of Tacoma, Washington, for William Stone.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Seattle, Washington, on October 18, 2005. On September 28, 2004, William Stone (Stone) filed the original charge alleging that the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 32, (Respondent or the Union) committed certain violations of Section 8(b)(1)(A) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). Stone filed the amended charge on November 2, 2004. On June 30, 2005, the Regional Director for Region 19 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent, alleging that the Union violated Section 8(b)(1)(A) of the Act by failing and refusing to provide Stone with a photocopy of the Union's hiring hall's welder out-of-work list. Respondent filed a timely answer to the complaint, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits and I find that at all times material, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

Mechanical Contractors Association of Western Washington (MCAWW) is a multiemployer association of employers engaged in the mechanical contracting business including, inter alia, Anthony Construction Co., Inc. (Anthony).

At all times material, Anthony has duly authorized MCAWW to represent it in collective-bargaining negotiations with the Union. Anthony in the course and conduct of its business, annually sells and ships goods from its facilities within Washington State, to customers outside Washington, or sells and ships goods to customers within Washington, which customers are themselves engaged in interstate commerce by other than indirect means, of a total value in excess of $50,000. Accordingly, Respondent admits and I find that Anthony is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

At the times material, Respondent and the MCAWW were parties to a collective-bargaining agreement, effective by its terms from June 1, 2002 to May 31, 2005. The agreement includes a hiring hall administered by the Union. Article I of the hiring hall rules and procedures of the collective-bargaining agreement requires signatory employers to obtain their employees performing plumbing and pipefitting work exclusively from Respondent by means of a referral system operated by Respon-

dent. Respondent maintains several hiring hall lists pursuant to rules and procedures set forth in the bargaining agreement.

The collective bargaining agreement provides:

> All Employers utilizing the Hiring Hall have the right to call from the "A" List any person covered by this agreement. However, for each person called for work in this manner, the Employer's next request for that craft must be filled from the first available qualified person from the "A" List.

In June 2004, Stone, a member of Respondent-Union, was registered on the hiring hall "A List" or out-of-work list for welders. On June 8, when Stone went to check on his place on the out-of-work list, he discovered that the computer where he would normally see the out-of-work list was not working. However, the most recent printed copy of the list was posted on a bulletin board in the hiring hall. Stone found his name on the list along with the names of 16 other welders. However, the printed list included an additional column not shown on the computer screen that Stone usually reviewed. The additional column, not usually seen by persons viewing the list on the computer, listed job classifications. Stone observed that every welder on the list was classified as a steamfitter but that he was classified as a pipefitter. Stone testified that pipefitters do not have as much training as steamfitters and that he was concerned that being classified as a pipefitter may have adversely affected his employment opportunities.

Stone first expressed his concerns to the secretary. He asked for a copy of the out-of-work list and was told that he could not have one. Stone spoke with Wayne Steadman the Union's dispatcher. Steadman told Stone that he had corrected the mistake and that Stone was reclassified as a steamfitter. He tried to explain that the mistake had made no difference because nobody would normally see the classification and that employers asked for, and were dispatched, welders. Stone asked for a photocopy of the out-of-work list, "for [his) records." Steadman answered that it was the Union's policy not to supply photocopies to anyone. In fact, the Union had a policy, in effect for at least 4 years, prohibiting the photocopying, mailing, and/or faxing of its out-of-work lists.

There is no dispute that the information desired by Stone was posted on the bulletin board. Stone has never been denied access to information regarding the out-of-work list. Under normal conditions, Stone or any employee or employer can access the out-of-work list from the computer at the union hiring hall.[1] The Union contends that Stone, any employee, or any employer is free to copy the out-of-work list. However, the Union contends that in an attempt to lessen the amount of by-name requests by employers, particularly out-of-town employers, it requires employers to come in to the hiring hall to see the out-of-work list. The Union will not read the list to an employer over the phone nor will it fax a copy of the list. However, an employer may come to the hiring hall and hand copy the list. The Union states that it does not want employees to bring a copy of the list to an employer in an attempt to solicit a job. The Union prefers that the employers seek referrals from the top of the out-of-work list rather than using by-name requests. The Union's position is that by refusing to photocopy its hiring hall lists, the Union is discouraging employers from exercising their contract rights to call employees by name. By refusing to furnish photocopies to employees, the Union is preventing employers from obtaining photocopies of the out-of-work lists from employees.

[1] As stated earlier, on June 8, 2004, the computer was not working.

B. Analysis and Conclusions

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that the Section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

A union's duty of fair representation includes an obligation to provide access to job referral lists to allow an individual to determine whether his referral rights are being protected. *Operating Engineers Local 324*, 226 NLRB 587 (1976); *Boilermakers Local 197*, 318 NLRB 205 (1995). Thus, a union violates Section 8(b)(1)(A) when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to obtaining job referrals. *NLRB v. Carpenters Local 608*, 811 F.2d 149, 152 (2d Cir. 1987), enfg. 279 NLRB 747 (1986). When a member seeks photocopies of hiring hall information because he reasonably believes he has been treated unfairly by the hiring hall, the union acts arbitrarily by denying the requested photocopies, unless the union can show the refusal is necessary to vindicate legitimate union interests. *Carpenters Local 608*, supra at 755–757. See also *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18 (1995). The record shows that Stone reasonably believed that he might not have been properly referred under the Union's hiring hall referral procedure and he requested photocopies of the referral records. The record contains no evidence that the request was overbroad that it would be burdensome to provide the information, or that Stone's concern about hiring hall procedures was unreasonable. Therefore, the burden shifts to Respondent to show that its prohibition on photocopying served some legitimate union interest. *Boilermakers Local 197*, 318 NLRB 205 supra; *Local* 102 *(Millwright Employers Assn.)*, 317 NLRB 1099 (1995). See also *National Assn. of Letter Carriers*, 328 NLRB 952 (1999).

Respondent's defense raised to its refusal to allow photocopying in this regard is that its no-photocopying rule discourages employers from "cherry picking" from the out-of-work list. In this context, cherry picking refers to an employer's practice of hiring only employees it wants from the list and possibly avoiding employees it does not want, who may be at the top of the list. Respondent relies on the Board decision in *Electrical Workers Local 3 (Fairfield Electric*), 331 NLRB 1498, 1501 (2000). In that case, the complaint alleged that the respondent-union violated the Act by posting the out-of-work list without listing the names of applicants. The out-of-work list posted in the hiring hall did not contain names of applicants, only their numbers. The respondent-union contended that it started posting the list without names because contractors and

their representatives were coming into the hall to see who was at the top of the list before making a request for employees. If they did not like the individual at the top, they would delay their request until someone they wanted to hire reached the top of the list. Although the posted out-of-work list only contained the applicants' referral numbers, the out-of-work books in which employee-applicants registered contained their names and numbers and that these books were available for review and inspection at times other than when they were being used by the referral officer for dispatch purposes. Thus, employees had ample opportunity to review this information if they believed they were being treated unfairly with respect to obtaining job referrals.

The Board found that the respondent-union had a legitimate reason for omitting names from the posted out-of-work list. In this regard, I note that the Board found that the respondent-union started posting the list with only the applicants' referral numbers because of the practice of some contractors of "cherrypicking" off the list. This reason was given to the employees when they requested that names be posted on the out-of-work list. The Board reasoned that "A union that operates an exclusive hiring hall has a legitimate interest in ensuring that work opportunities are available to all registrants and that employers do not circumvent the hiring hall procedure in order to favor some employees over others." Accordingly, the Board dismissed this allegation of the complaint.

I find *Electrical Workers Local 3* distinguishable. In the instant case there is no evidence that employers sought to circumvent the hiring hall procedure. Rather, Respondent sought to limit employers' use of by-name requests which are provided for in the collective-bargaining agreement.[2] Respondent argues that no-photocopying discourages employees from hustling their own jobs. However, there was no evidence that such a practice took place. Further, with hand copying of the list and by-name requests permitted, employees could easily hustle their own jobs. Most important, in *Electrical Workers Local 3* the Board found that, additional information, the names of employees did not need to be posted and made available to employers, where the information was otherwise available to employees in the respondent's books. Here, the information was available to both employees and employers. The Union's refusal to make a photocopy did not serve a legitimate interest. As stated earlier the right to photocopy is a corollary to the right of access to referral records. When, as here, a member seeks photocopies of hiring hall information because he reasonably believes he has been treated unfairly by the hiring hall, the union acts arbitrarily by denying the requested photocopies, unless the union can show the refusal is necessary to vindicate legitimate union interests. *Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205 at fn. 2 (1995); *Operating Engineers Local 3 (Kiewit Pacific Co.)*, 324 NLRB 14 (1997). I do not find the Union's desire in limiting employers' contractual use of by-name requests to qualify as "necessary to vindicate legitimate union interests." I note Respondent is not being asked to give employees or employers any additional information, it is simply being asked to give a photocopy to an employee under circumstances where that employee has a reasonable belief that he has been treated unfairly by the hiring hall. I therefore find and conclude that Respondent violated the Act as alleged.

[2] It appears that if anyone was seeking to circumvent the agreed upon hiring hall procedure it was the Union.

CONCLUSIONS OF LAW

1. Mechanical Contractors Association of Western Washington (MCAWW) is a multiemployer association of employers engaged in the mechanical contracting business including, inter alia, Anthony Construction Co., Inc. (Anthony).

2. At all times material, Anthony has duly authorized MCAWW to represent it in collective-bargaining negotiations with the Union.

3. Anthony Construction Co., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 32, is a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent violated Section 8(b)(1)(A) of the Act by denying an employee request for a photocopy of referral records of its exclusive hiring hall under circumstances where the employee had a reasonable belief that he had been unfairly treated by the hiring hall.

6. Respondent's acts and conduct above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I recommend that Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[3]

ORDER

The Respondent United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 32, Tacoma, Washington, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Denying requests for photocopies of referral records from employees who are registered for referral from its exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

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

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

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

(a) Within 14 days after service by the Region, post at its hiring hall, meeting rooms, and offices in Tacoma, Washington, copies of the attached notice marked Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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.

(b) Within 14 days after service by the Region, sign and return to Regional Director for Region 19 sufficient copies of the notice for posting by the employer-members of Mechanical Contractors Association of Western Washington (MCAWW) if willing, at all places where notices to employees are customarily posted. Further, Respondent-Union shall duplicate and mail, at its own expense, a copy of the notice to employees and members, to all former bargaining unit employees employed by the employer-members of MCAWW at any time since June 8, 2004, and to all current bargaining unit employees employed at any worksite at which the employer-members of MCAWW are unable for any reason to post the notice to employees and members.

(c) 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.

Dated, Washington, D.C. December 9, 2005

APPENDIX

NOTICE TO EMPLOYEES
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 Federal labor law and has ordered us to post and obey this notice.

Section 7 of the Act gives employees these rights.

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

WE WILL NOT arbitrarily deny requests for photocopies of referral records from employees who are registered for referral from our exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

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

WE WILL provide William Stone with a photocopy of the Welder's referral list of June 8, 2004.

ANTHONY CONSTRUCTION CO.

[4] 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."