

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

UNITED ASSOCIATION OF PLUMBERS
AND STEAMFITTERS, LOCAL 290, AFL-CIO¹

and

Case 36-CB-2437

THOMAS N. TASSINARI, An Individual

Linda J. Scheldrup, Esq.,
of Portland, Oregon for the General Counsel.

Stephen H. Buckley, Esq.,
(*Brownstein, Rask, Sweeney and Kerr*)
of Portland, Oregon for Respondent.

Daniel Dickerson, Esq.
of Portland, Oregon for Charging Party.

DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. This case was tried before me in Portland, Oregon, on November 19, 2002, upon the General Counsel's complaint which alleges that Plumbers, Steamfitters, and Marine Fitters, Local 290 affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 29 U.S.C. Section 151, et seq. (Act). The principal issue presented is whether Respondent violated the Act by refusing to provide the Charging Party, Thomas N. Tassinari (Tassinari) with copies of dispatch records for the period of time he was a registrant on the out of work list and with a complete copy of its hiring hall rules.

Respondents filed a timely answer and denied any wrongdoing.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the oral argument of Counsel for the General Counsel and the brief of Respondent, I make the following

¹ In its brief, Respondent moved to correct its name to Plumbers, Steamfitters, and Marine Fitters, Local 290 affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. The Complaint will be amended to reflect Respondent's correct name.

about these matters on the phone and Tassinari had to come to the Union office to talk about his removal. Later that day Tassinari went to Respondent's office in Tualatin where both Warhurst and Lively were present. The office had a glass window about four by four feet that separated the lobby from the working part of the office. Taped to the window were the three page 1995 Amendments to the Rules and Regulations for the Referral and Hiring Procedures (Amendments)⁴ and a two page letter dated September 27, 1995 that summarized the Amendments. The 1995 Amendments amended the following parts of Respondent's Rules and Regulations for the Referral and Hiring Procedures dated September 29, 1993:

Section 2-METHOD OF HIRING PERSONNEL,
Paragraph D. THE HIRING HALL REGISTER, Subparagraph 4;

Section 3-HIRING HALL PROCEDURE,
Paragraph A. REGISTRATION

Paragraph G. PHYSICAL AVAILABILITY FOR WORK, Subparagraph 1

Paragraph J. MAINTENANCE AND LOSS OF POSITION ON HIRING REGISTER, Subparagraph 2, Work Rejection

The Amendments also added a new Subparagraph 5 to Paragraph J.

Tassinari told Lively his name and said, "I have three strikes against me. I would like to find out what they are." Tassinari then asked to see the hiring hall register. Lively replied, "No, I can't show it to you." Tassinari then asked Lively for copies of the three strikes. Lively looked at Warhurst, who shook his head in the negative. Lively then said, "No, I cannot give you copies of the three strikes." Tassinari asked Lively if she would tell him what the hiring hall register said so he could know what the three strikes were. Lively then told Tassinari that the three strikes were, "On May 7 at 5:18 p.m. there is a busy signal. Strike one. May 21, message unreturned, strike two. April 17, strike three, message unreturned." Tassinari then asked Warhurst if he could appeal the matter. Warhurst replied, "You can go ahead and try but nobody has ever won."⁵ On May 25, Tassinari filed an appeal of his removal from the hiring hall register on the basis that he had not refused referrals.⁶

On May 28, Tassinari returned to Respondent's Tualatin office to obtain a copy of the hiring hall rules. Both Warhurst and Lively were present. Tassinari asked Warhurst for a copy of the hiring hall rules and Warhurst said, pointing to the documents taped to the window, "Right there." After walking out of Respondent's office briefly, Tassinari returned and asked Lively,

⁴ General Counsel's Exh. 4.

⁵ Warhurst testified that Tassinari only asked the dates and why he was removed from the out of work list. Warhurst said Lively told Tassinari the dates of the strikes and then showed him the referral sheets. Warhurst denied Tassinari asked for copies of the hiring hall records. Lively was never called as a witness. In his brief Respondent's Counsel refers to a dismissal letter from the Regional Director for Region 19 dated September 30, 2002, which finds in part that Lively showed Tassinari the hiring lists. First, the letter was not offered into evidence at the hearing and is not part of the record. Second, I am not bound by the contents of the Regional Director's letter from another case. Finally, there is nothing in the contents of the Regional Director's letter that is inconsistent with Tassinari's testimony. I credit the testimony of Tassinari which was given in a more detailed and complete manner than that of Warhurst.

⁶ General Counsel's Exh. 3.

“Are copies of these (hiring hall) rules available for people if they ask?” Lively replied, “I’ll find out. I have to check with Mike (Warhurst).” Lively looked at Warhurst, who nodded his head in the affirmative. Lively then supplied Tassinari with copies of the 1995 hiring hall rules Amendments taped to the window. As Tassinari was leaving Respondent’s office, in the parking lot, he found a copy of Respondent’s 19 page Rules and Regulations for the Referral and Hiring Procedures dated April 1, 1999.⁷

B. Analysis and Conclusions

1. The Refusal to Provide the Job Referral Records.

In *International Brotherhood of Boilermakers, Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205 (1995), the Board concluded:

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). 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 Board in *Boilermakers Local 197* found that legitimate union interests might include preserving confidential information, overbroad or burdensome requests.

In the instant case, I have found that Tassinari made a request for job information to establish that he had not refused work, that Respondent refused access to the job referral lists and refused to make photocopies of the lists. Respondent argues that the information Tassinari sought contained confidential information justifying its refusal to furnish the referral records. However, that argument fails because according to Warhurst, Respondent has a policy of allowing individuals to examine referral records. Under these circumstances Respondent cannot maintain that the records are confidential. I find that in refusing to allow access to referral records and in refusing to give Tassinari copies of the referral records, Respondent violated Section 8(b)(1)(A) of the Act.

2. The Refusal to Provide Copies of the Hiring Hall Procedures.

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 6 (San Francisco Electrical Contractors Association)*, 318 NLRB 109, 124-125 (1995); *Electrical Workers IBEW Local 575 (Coleman Electric)*, 270 NLRB 66 (1984); *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

⁷ General Counsel’s Exh. 5.

for employment adequate notice of its hiring hall procedures," *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 426 (1984). In *IBEW Local 6, supra* at page 134 the Board affirmed the administrative law judge's test for determining when a union must inform hiring hall users of hiring hall procedures:

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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.

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Reasonableness is a factual question which will of course be judged in context. . . . 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 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.

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Tassinari requested and Respondent provided him with the 1995 Amendments to the hiring hall rules. At no time was Tassinari furnished with a complete, current copy of all the hiring hall procedures. Respondent contends it had no obligation to furnish Tassinari with a complete set of hiring hall rules since all he requested was the 1995 Amendments. This argument is without merit. By posting the 1995 Amendments on Respondent's office window and referring to them as the hiring hall rules, Respondent created the impression that these were the complete and current rules then in effect. In fact the 1995 Amendments had been superceded by the 1999 rules. The 1999 rules contained provisions relevant to Tassinari's intelligent utilization of the hiring hall that were not in the 1995 Amendments, including rules dealing with layoff priorities, appeals process, definitions of work availability, order of registration, requirements that the work registers were available for inspection by registrants, limitation of work availability to special skills and hours registrants needed to be available for work referral. Tassinari was entitled to a complete copy of the 1999 hiring hall rules not merely a partial set of amendments. By failing to provide Tassinari with a complete and current set of hiring hall procedures, Respondent violated Section 8(b)(1)(A) of the Act.

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Conclusions of Law

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. The Plumbing and Mechanical Contractors Association, a multi-employer association of employers and its employer-members, are employers affecting commerce within the meaning of Section 2(2), (6) and (7) of the Act.
3. By refusing to provide Thomas Tassinari with access to referral records, by refusing to provide copies of referral records and by refusing to provide copies of current hiring hall procedures, Respondent breached its duty of fair representation and engaged in conduct that violated Section 8(b)(1)(A) of the Act.

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

The Remedy⁸

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Having found that Respondent engaged in serious unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist from said unlawful acts and conduct and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Respondent shall be ordered to provide Thomas Tassinari with access to and copies of referral records for the periods of time he was on the out of work list and provide him with a current copy of Respondent's hiring hall procedures.

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

ORDER

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Respondent, Plumbers, Steamfitters and Marine Fitters, Local 290 affiliated with the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Tualatin, Oregon, its officers, agents, and representatives, shall

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1. Cease and desist from

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(a) Arbitrarily 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.

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(b) Arbitrarily denying requests for copies of current and complete hiring hall rules from employees who are registered for referral from its exclusive hiring hall.

(c) 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.

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⁸ In the Complaint the General Counsel has sought a broad remedy, including an order that Respondent post on bulletin boards maintained by contractors bound to the Agreement, a copy of the Board Notice in this matter. The record does not support such a broad remedy. Only Charging Party was affected by Respondent's unfair labor practices. There is no evidence of widespread refusal to provide hiring hall records or procedures as in *Electrical Workers, IBEW Local 6, supra*. Posting a Board Notice at Respondent's facility in Tualatin, Oregon where the unfair labor practices took place, should be sufficient notice to employees and members to remedy the unfair labor practices committed.

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⁹ 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.

(a) Honor Thomas N. Tassinari's request for photocopies of referral records on payment of reasonable costs for those photocopies or, alternatively, allow him to photocopy those records.

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(b) Honor Thomas N. Tassinari's request for complete and current hiring hall rules.

(c) Within 14 days after service by the Region, post at its hiring hall in Tualatin, Oregon copies of the attached notice marked "Appendix."¹⁰ 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 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to 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 facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 24, 2002.

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

Dated, San Francisco, California, this 10th day of February.

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John J. McCarrick
Administrative Law Judge

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¹⁰ If this Order is enforced by a Judgment of the 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."

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APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated 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 for you on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected 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 arbitrarily deny requests for complete and current copies of hiring hall rules from employees who are registered for referral from our exclusive hiring hall.

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 honor Thomas N. Tassinari's request for photocopies of referral records on payment of reasonable costs for those photocopies or, alternatively, allow him to photocopy those records.

WE WILL honor Thomas N. Tassinari's request for complete and current copies of our hiring hall rules.

UNITED ASSOCIATION OF PLUMBERS AND
STEAMFITTERS, LOCAL 290, AFL-CIO

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

601 SW 2nd Avenue, Suite 1910, Portland, Oregon 97204-3170
(503) 326-3085, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284 OR THE OFFICER-IN-CHARGE OF SUBREGION 36, (503)-326-3289.