

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

LOCAL 334 LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA  
(Detroit Building Group, LLC)

and

Case 7-CB-15224

JAMES EDWARD TAYLOR, An Individual

*Eric S. Cockrell, Esq.* for the General Counsel.  
*Bruce A. Miller, Esq. (Miller Cohen, P.L.C.)*, of  
Detroit, Michigan, for the Respondent.  
*Robert E. Day, Esq. (Robert E. Day, P.C.)*, of  
Detroit, Michigan, for the Employer.  
*Mr. James E. Taylor*, of Detroit, Michigan, for  
the Charging Party.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge. This case was tried in Detroit, Michigan on September 28 and 29, and December 12, 2006, and on February 13, 2007.<sup>1</sup> The charge was filed on June 6, by James Edward Taylor, against Local 334, Laborers' International Union of North America (Union or Respondent), and the complaint, which was issued on August 15, alleges that Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, (Act) (1) in January 2006 by its agent Darryl Gray, in a telephone conversation, threatened employees that the Charging Party would not be dispatched to work at the Motor City Casino jobsite unless he withdrew the unfair labor practice charge he filed against the Respondent, and (2) on or about April 17, by its agent Gray, in a telephone conversation, threatened employees that it "blackballs" employees who go against the Respondent. In its answer Respondent denies violating that Act as alleged. Respondent alleges that Gray was appointed Job Steward, he had no connection to the hiring procedures for Local 334, his responsibilities did not include speaking on behalf of general agents of Local 334, and he is not an agent of Respondent with reference to any acts alleged against him.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for General Counsel and the Respondent,<sup>2</sup> I make the following

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<sup>1</sup> All dates are in 2006 unless otherwise indicated. The trial was continued on September 29 for enforcement of Respondent's subpoena of Union steward Darryl Gray. And the trial was continued from December 12 to February 13, 2007 because of the unavailability of Charging Party James Edward Taylor on December 12.

<sup>2</sup> Respondent's unopposed April 3, 2007 Motion to Accept Brief as a Late Filing with the Division of Judges in Atlanta, Georgia is hereby granted.

## Findings of Fact

## I. Jurisdiction

5 Detroit Building Group, LLC (Employer), with offices and work sites in the State of  
Michigan, has been engaged as a commercial contractor in the construction industry doing  
commercial construction for various entities in the State of Michigan, including Motor City  
Casino and MGM Grand Casino. The complaint alleges, the Employer admits, and I find that  
10 during the calendar year 2005, the Employer, in conducting its operations described above,  
provided services in excess of \$50,000 for Motor City Casino and MGM Grand Casino,  
enterprises directly engaged in interstate commerce; and that at all material times, the Employer  
has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The  
complaint alleges, the Respondent admits, and I find that the Union is a labor organization  
within the meaning of Section 2(5) of the Act.

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## II. Alleged Unfair Labor Practices

General Counsel's Exhibit 2 is the Uniform Local Union Constitution of the Laborers'  
International Union of North America. Article IV E(3) of this exhibit reads as follows: "The  
20 Business Manager shall have the authority to appoint and supervise Stewards."

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The Union's dispatcher, Glen Dowdy, testified that Gray ran for President of the Union  
on the same slate as John Scott Covington in 2002; that Gray was appointed business agent at  
that time; and that Gray quit as business agent in 2003 after a difference of political opinion with  
25 Covington.

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Covington, who has been the elected Business Manager of the Union since 2002,  
testified that he ran on a slate with Gray, who was President of the Union from late 2002 to June  
2005; that Gray was also a business agent<sup>3</sup> with the Union for about a year and a half, quitting  
30 this position sometime in 2003 when the Union was placed under supervision,<sup>4</sup> it had only  
limited funds, and the area that Gray was responsible for expanded; that there was political  
tension between him and Gray because he appointed Gray's brother as a steward on a job, the  
involved employer removed Gray's brother from the job because he was not working and was  
verbally abusive to his supervisors, and the Union put another steward on the job in Gray's  
35 brother's place; that he and Gray had words because Gray did not believe that he, Covington,  
did enough to protect his, Gray's, brother; that he ran again in 2005 for Business Manager,  
which is the top position in the Local since the President of the Local does not have any job  
authority; that Gray ran for President in 2005 but he ran on another slate with Eric Robinson for  
business manager; and that in 2005 Gray's slate lost to Covington's slate.

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<sup>3</sup> Covington testified that the business manager appoints the business agent, who (a)  
polices jobs with respect to safety, the payment of benefits, and jurisdiction, (b) is involved in the  
grievance procedure, (c) can be appointed to assist the business manager during negotiations,  
and (d) meets with management on the job about issues or disputes.

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<sup>4</sup> Covington explained that when he was first elected in 2002 Local 334 was chartered under  
the International; and that International Vice President Terrance Healey spoke to him and then  
the Executive Board of Local 334, telling them that they had a choice, namely go under a  
supervisor who would direct the affairs of the Local and show them what was expected and how  
he should perform his duties or the Local could go under a trusteeship which would mean the  
50 trustee would come in and the trustee could remove everybody and reorganize the Local in  
whatever shape the trustee deemed necessary.

Gray testified under a Federal District Court enforced subpoena on February 13, 2007. He testified that he was President of the Union from 2002 to 2005; that Covington was the business manager at the time; that the President runs the Union meetings, signs the checks,  
5 and oversees board meetings; that the business manager is the key officer of the Local in that he "runs all the affairs in the local" (transcript page 254); that the business manager sends the agents out and conducts general day-to-day business; that he and Covington had a "falling out" (Id.) after 2005 both politically and personally; that he subsequently unsuccessfully ran for President against Covington's union slate in 2005; and that he subsequently dropped out from  
10 running as an independent delegate to the union convention.

On cross-examination Taylor testified that he met with Covington in July 2005 and he told Covington that he wanted to "bury the hatchet" (transcript page 36); that he told Covington that he wanted to go to work and he wanted to know what the problem, disagreement, or beef  
15 was between them; that Covington told him that he could not put him to work in that he was going off the out-of-work list; that he wanted to get a job assignment regardless of the out-of-work list; that he told the National Labor Relations Board (Board or NLRB) that there were people who went to work who were not on the out-of-work list; that the Board dismissed the claim; and that he believed that Covington was wrong in telling him that he had to go by the out-  
20 of-work list.

Also, Taylor's testified on cross-examination that he again spoke with Covington after a funeral, asking Covington about the MGM Casino and Motor City Casino jobs because he had been offered jobs at both sites; that Chuck Robinson offered him a job at the MGM Casino site  
25 but he did not get the job; that Covington did not tell him that he could not put him on those jobs because he had to go through the out-of-work list; that in his January 31 affidavit to the Board he indicated that for the MGM Casino or Motor City Casino jobs "guys have to be sent from the out-of-work list from the hall" (transcript page 42); and that he told Covington that there were two guys on the job who did not go through the hall, and Covington did not reply.

Covington testified that when he and his father, who was the business manager of the Union from 1996 to 2002, were leaving the church where the funeral of former member Sanchez was held Taylor approached him; that this occurred before Taylor filed his Board charge; that  
30 Taylor asked if he could talk to him and tried to hand him a bag or baggie; that he walked away from Taylor; and that six months before this he told Taylor, who asked for work, that it was not like the old days and the Union now went by the rules, in that it sent people out when their name came up on the out-of-work list.

On cross-examination Covington testified that he has not spoken to Taylor since this  
40 brief encounter outside the church where Sanchez's funeral was held.

On rebuttal Taylor testified that he did not attempt to hand anything to Covington when he saw him after the Sanchez funeral; and that he asked Covington that if he got onto one of the casino jobs could he stay and Covington told him "no. He said other guys have got on the job  
45 without going through the Hall, and he was trying to stop it." (transcript page 295).

According to Taylor's testimony, he had a third conversation with Covington about going to work at the MGM Casino and Motor City Casino jobs. Taylor testified that he told Covington at the Union hall that he had been out of work for four years, and his book (record of dues  
50 payments) had fallen behind; that he asked Covington how he expected him to make up his book when he had not worked since 2002; that he told Covington that he had bills for his car, home, and utilities and he had to pay them before he paid his union dues; that he asked

Covington if he got a job at MGM Grand Casino, could he work the job and Covington said no because he was using the out-of-work list; and that his dues were paid up.

5 On cross-examination Covington testified that before Taylor filed the NLRB charges he expressed concerns about getting work through the hall; and that, as noted above, he has not spoken with Taylor since the date of the Sanchez funeral.

10 At the outset of the trial the parties stipulated that "Darryl Gray has been a union steward at the Motor City Casino job site since January 9, 2006, and he was appointed by Business Manager Scott Covington" (transcript page 6). Dowdy testified that in January 2006 Business Manager Covington appointed Gray as a steward for the Motor City Casino job; and that at the time he, Dowdy, testified at the trial herein, September 28, Gray was not working as a steward at the Motor City Casino jobsite because Gray was injured in an automobile accident. Covington testified that there are no documents which specify the responsibilities of a job steward; that he  
15 appointed Gray as a job steward in January 2006 on the Motor City Casino job; that the duties of a job steward include (1) recording the hours the members work on a monthly report for purposes of benefits and wages, and (2) calling the business agent if there is a craft jurisdiction or safety problem; that the steward cannot write grievances, meet with management about the terms and conditions of employment, or bargain with the employer; that the steward does not  
20 have any authority away from the jobsite; and that the job steward does not receive any payment from the Local, he is not reimbursed for expenses, the Union does not pay for his cell phone, he does not get mileage, and he can be removed from the job the same as any other laborer.

25 On cross-examination Covington testified that he signed the 2006-2009 collective bargaining agreement between the Union and Associated General Contractors of America Greater Detroit Chapter, Inc., General Counsel's Exhibit 5; that the agreement, along with at least one other agreement, covers the Motor City Casino jobsite, and describes some of the duties of job stewards, namely accompanying an injured or sick employee to the doctor, a clinic  
30 or hospital, and notifying the foreman of any unsafe equipment or working condition; that the Union's constitution, General Counsel's Exhibit 2, gives him the authority to appoint and supervise union stewards, and it does not require him to appoint any particular individual to serve as union steward; and that Article III, Section 1 of the aforementioned collective bargaining agreement, General Counsel's Exhibit 5, reads, in part, as follows:

35 If in the opinion of the Business Manager of the Union, there is no employee on the job who is capable of performing the duties of a Steward, the Business Manager shall be given the opportunity to recommend a responsible applicant to perform this service for the Employer and the Union, with the understanding that should the honest intent of the  
40 foregoing be violated, the Union agrees to meet immediately and discuss the alleged complaint in the interest of both parties.

45 Covington further testified that in appointing Gray to serve as union steward for the Motor City Casino job he, Covington, was exercising his authority and he was not locked into appointing Gray as a union steward for this job; that Gray is not the only member working on the Motor City Casino jobsite; that the foreman on the job asked him to send a union steward to the Motor City Casino jobsite and he sent Gray; that he could have appointed someone other than Gray as the steward for this job; and that Gray and his wife were recently involved in an automobile  
50 accident.

On redirect Covington testified that the collective bargaining agreement does not make the steward a steward when he is at home or in a bar, and the steward's functions are related to

the particular job he or she is working. And on recross Covington testified that only he and the dispatcher are responsible for managing the out-of-work list, except that when they are both unavailable Rick Williams, who is Vice President and field representative, takes on that responsibility; and that the steward has no authority to do the hiring.

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Gray testified that one day outside the Union hall, while he was getting into his car, Taylor said that he was going to file charges because he had not worked in 2 to 3 years; that he told Taylor "give me a chance maybe I can help you out finding a job" (transcript page 260); that he did not report this conversation to Covington; that he never discussed Taylor's NLRB charges with Covington; that he never talked to the officers in Local 334 about "Mr. Covington's" (sic) (transcript page 260) NLRB charges; that when he spoke with Taylor on the street in front of the Union Hall he was not acting as a steward at that time; and that he could not act as steward away from the job.

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On cross-examination Gray testified that the conversation outside the Union hall occurred in early January 2006; that Covington appointed him the Union steward for the Motor City Casino jobsite in "December - - .... November of 2005" (transcript page 267); and that his conversation with Taylor by the car outside the Union hall occurred in late December 2005 or early January 2006.

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On rebuttal Taylor answered "[n]o" (transcript page 289) to the following question: "[d]o you recall any curbside conversation with Mr. Taylor outside the Union hall." (Id.) On cross-examination Taylor testified that he did not tell Gray at the Union hall that he, Taylor, was going to file an unfair labor practice charge with the Board; and that he did not tell anybody that he was going to file an unfair labor practice charge with the Board.

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Taylor, who has been a member of the Union since 1988, filed a charge with the Board on January 17 in Case 7-CB-15053 against the Union, naming Covington as the Union representative to contact, General Counsel's Exhibit 3. Taylor alleged that

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(1) My Labor Union ... engaged in ... unlawful practices by not being an Exclusive hire Hall,

(2) Wrong doing without Labor Union out of work list for last 6 months, and I have been paying my dues,

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(3) Guys transfer books (union card) from Local 1191 & 1076 and would be put to work a week later. I have not been put on a union job in three years.

As indicated below, the Board dismissed this charge.

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According to his testimony, between 9 and 9:30 a.m. on January 24 Taylor telephoned Covington at the Union hall and when he was told that Covington was not in, he asked to speak with Dowdy. Taylor testified that Dowdy told him that he could not talk with him because he had filed charges with the Board; and that Dowdy told him that 13 members had filed for an annuity unlawfully, Covington was going to press charges against them, and one of them was someone close to Taylor.

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Dowdy testified that a couple of weeks after Taylor filed the Board charge he asked to talk to him at the Union hall and he told Taylor that he had been advised by the Union's attorney that he should not discuss anything to do with the Board case with Taylor, he was in a hurry, and he walked away from Taylor; that this is the only time he and Taylor had any discussion or attempted discussion about the Board matter; and that he never had any conversations with Gray, and Gray never approached him relating to the case that was filed by Taylor.

On cross-examination Dowdy testified that Taylor asked to talk with him in the Union hall right after Taylor filed the first charge with the Board.

5 On cross-examination Covington testified that he did not have Dowdy talk to Taylor on his behalf about the charges.

10 According to his testimony, as soon as he finished his conversation with Dowdy, Taylor telephoned Marthara (Mike) Walker, who is his first cousin, and told him what Dowdy had said about (a) the 13 members filing for annuities unlawfully, (b) Walker being one of the 13, and (c) Covington pressing charges against the 13 who had falsified paperwork for their annuity.

15 Taylor testified that about 15 minutes later Walker telephoned him and told him that Gray wanted to get in touch with Taylor; that Walker asked him if it was okay to give his, Taylor's, telephone number to Gray; and that he told Walker that it was okay and then he asked Walker what it was all about. Further, Taylor testified that Walker told him that Gray told Walker (not offered for the truth of the matter asserted) that he has requested Taylor on the Motor City job with Gray's brother, and Covington told Gray about the Board charges "[a]nd if ... [Taylor] dropped the charges --." (transcript page 24) According to Taylor's testimony, Walker told him to call Gray right away, which he did.

25 Walker testified that he has been disabled since January 24 from a back injury he received in an automobile accident; that he was a member of the Union in 1988 and 1989, he left the Union and he came back to the Union in 1997 to January 2006; that Taylor is his cousin; that one morning in January 2006 about 11 or 11:30 a.m. Gray, who he has known for 18 years, telephoned him and asked him for Taylor's telephone number; that he asked Gray what it was about and Gray said it was about a job; that he asked Gray if he was going to get Taylor a job where Gray was working; that Gray told him yes "I'm trying to work on that now ... but he [Taylor] had to drop the charges that he had against Scott Covington in order to get the job down there" (transcript page 85)<sup>5</sup>; that he told Gray that he would call Taylor and have Taylor call him; that he then telephoned Taylor and told him that Gray wanted Taylor to call him; that Taylor asked him what it was about; that he told Taylor that Gray was trying to get him down on the jobsite but Taylor had to drop the charges; and that he asked Taylor to call him back after Taylor spoke with Gray.

35 On cross-examination Walker testified that he left the union when "work wasn't all that plentiful" (transcript page 83); that in 1990 he was working as a security guard; that in 1991 he was incarcerated for about 5 years for receiving car parts and concealing; that he had a prior felony conviction for carrying a concealed weapon (There was no objection to the question eliciting this information.); that he got out of jail in 1997 and he went in in 1991, 6 years earlier; that Gray telephoned him on his cell phone because Gray did not have Taylor's telephone number; that Gray told him that he was trying "to give Mr. Taylor a job if he dropped the charges against Mr. Covington" (transcript page 99); that if Gray knew Taylor's number, he did not have it on him; that Gray, who is his friend, has contacted him often on his cell phone; that he has known Gray, who is also a friend of Taylor, since 1988; that he found out that the Union was going to come after him because of the annuity fund after he spoke with Gray; that he told the Board agent who took his February 14 affidavit that Gray was a steward but his affidavit only indicates 'Gray is the union's former president and is currently a union member' (transcript page

50 <sup>5</sup> Counsel for General Counsel indicated that the quoted testimony was not being offered for the truth of the matter asserted but it was presented to show what happened next.

116); that the time he was president of the Union Gray, who ran with Covington, quit the position; and that Gray ran again for president and the second time he did not run with Covington.

5 Taylor testified that he then telephoned Gray, who used to be the President of Local 334 and at the time of the telephone call was the steward on the Motor City Casino job, and asked him what was going on; and that Gray

10 told me that he had requested me for the Motor City job and his brother, Mike. .... And he asked me -- he said he had heard about -- he was told about the charges that I had filed. And ... Covington wanted me to drop the charges. So I told Darryl [Gray] I would gladly drop the charges if I could go to work. Talked to ... Covington, let him know one hand wash[es] the other hand and I'd gladly drop the charges. [Transcript pages 25 and 26]

15 Further Taylor testified that Gray told him that he would get back with him as soon as he got back with Covington.

20 Gray testified that an employer can let a steward, whose function on the job is to insure the safety of the employees and the integrity of their work, know that the employer needs some men and the steward then calls the union hall and indicates how many guys the employer needs and what kind of service is involved; that as a steward he could file a grievance but he did not while he was steward at the Motor City Casino jobsite or anywhere else (transcript pages 265 and 266); that a steward cannot hire but he does call the union hall; that he did telephone Walker to ask him for Taylor's telephone number; that he did not tell Walker that Covington wanted Taylor to drop the charges; that he then telephoned Taylor and told him about the Motor City job, indicating to Taylor that "if he dropped the charges against the Local, I would try to help him get a job" (transcript page 262); and that while he had already spoken to the foreman on the Motor City job about getting his brother Mike and Taylor working on the job (by bypassing the out-of-work list), he decided not to have Taylor work on the job because Taylor told him that 30 "only 40 percent of his kidney was working" (transcript page 261), and he would feel bad if something happened to Taylor on the job; that his brother Mike did come to work on the Motor City job; that he did not tell Taylor that if he filed charges against the Local, ... Covington would get even" (transcript page 262); that while he told ... Taylor if he dropped the charges against the Local, I would try to help him get a job, he, Gray, never said anything about Covington; that 35 when he said this he was acting on his own; that he said this because the Local did not have any money and he did not want Taylor "mess[ing] with the Local because this is our livelihood. So let me try to help you before you do this" (transcript page 263); that no one from the Local asked him to act as intermediary for them to get Taylor to drop the charges; that he did not 40 "make a request to the hiring hall for ... Taylor to come out on the Motor City job" (transcript page 264); that "I called him [Taylor] on the phone and asked him to come out. I never request[ed] ... the Union Hall, no" (Id.); that this was the conversation in which Taylor made reference to his physical condition, this was before he found out about Taylor's physical condition; that Taylor came out to the Motor City jobsite before he spoke with Taylor on the 45 telephone, and he told Taylor at the job site that when they started hiring he would give Taylor a call; and that sometime before this he told Taylor at the Motor City jobsite that when they started hiring he would give Taylor a call.

50 On cross-examination Gray testified that Covington appointed him steward on the Motor City job in December 2005; that if he was not injured in an automobile accident and the contractor, Colasanti, was still at the site, he would still be working at Motor City; that before the automobile accident, his wife, who was also in the accident, did receive medical insurance

benefits under his coverage; that before the automobile accident his wife paid the Local \$15, signed the Local's out-of-work list, and was a member of the Local; that his boss on the Motor City job, the foreman, was from the Union; that he reported to business agent Ricardo Williams, who was not on the jobsite on a daily basis; that one of his responsibilities at the Motor City Casino jobsite was to insure that no other trades were doing laborers' work; that as steward at the Motor City Casino jobsite he did not care what union the employee was out of "[a]s long as a member ... [had] a good book" (transcript page 276)<sup>6</sup>; that he did fill out steward reports, General Counsel's Exhibit 10; that the second column of the reports, which is designated "Month Paid" refers to "[t]he month through [which] the Union book is paid up to" (transcript page 278); that he made the notations in this column because "[p]art of my job as ... steward is [to] make sure a guy[s] book is current. So the way I keep up with it was putting it on the monthly paid status" (transcript page 278); that if there was a layoff of Local 334 members at the Motor City Casino jobsite, he as the union steward on the job would be one of the last two working laborers laid off; that if there was an interruption of work at the Motor City Casino jobsite as the union steward he would be the second laborer to be called back to work; that as the steward for the Motor City Casino jobsite one of his responsibilities is to notify the job foreman of any unsafe equipment or working conditions; that in January 2006 when Taylor came to the Motor City Casino jobsite he told Taylor to go to the office and fill out an application; and that his telephone conversation with Taylor occurred maybe two or three weeks after he spoke with Taylor outside the Union hall by the cars.

Subsequently Gray testified that when Taylor came out to the Motor City Casino jobsite he told Taylor that when they start hiring he would give Taylor a call; that he could have brought Taylor out to the Motor City Casino jobsite without going through the out-of-work list; that he could have requested Taylor to come out to work on the Motor City Casino jobsite through his foreman on the job; that if he told the foreman of the Motor City Casino job that he wanted Taylor working on the Motor City Casino jobsite, the foreman could make a specific request to the Union Hall and the out-of-work list would be bypassed; that he telephoned Taylor; that he had requested two guys for the Motor City Casino job, namely his brother Mike and Taylor; that he had made the request of his foreman so that the foreman could call the hall for his brother Mike and Taylor; that before he spoke with Taylor on the telephone, after getting Taylor's telephone number from Walker, he, Gray, had already made the request through the foreman for his brother Mike and Taylor to be sent to the Motor City Casino jobsite; that there was nothing said about Taylor's Board charges when he telephoned Taylor, after getting his telephone number from Walker; that he never discussed Taylor's filing charges after the conversation he had with Taylor outside the Union Hall when he, Gray, was getting into his car; and that after his telephone conversation with Taylor, after Walker had given him Taylor's telephone number, he did not leave a message for Covington with respect to bringing Taylor out to the Motor City Casino jobsite.

At the trial herein on September 29 Respondent's attorney elicited the following testimony from Covington:

Q. BY MR. MILLER: You're aware, are you not, that Mr. Gray made a statement under oath in my office in connection with this matter?

A. Pardon me, sir?

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<sup>6</sup> The question dealt with insuring that contractors hire Local 334 members who were up to date in their membership paying dues.



Q. I say are you aware that Mr. Gray made a statement under oath in my office with reference - -

5 A. Yes.

Q. - - to this matter? And you read the statement under oath in my office with reference - -

10 A. I was not there.

Q. And in that statement Mr. Gray denied that - -

MR. COCKRELL: Objection, Your Honor. Leading.

15 JUDGE WEST: Overruled.

Q. BY MR. MILLER: And in that statement Mr. Gray denied any involvement with Mr. Taylor?

20 A. Yep, that's correct. [Transcript pages 203 and 204, with emphasis added]

On rebuttal Taylor testified that he did not tell Gray anything about his kidneys when Gray spoke to him about going out to the Motor City job; that he did not have a problem with his kidneys; that one morning in January 2006 he went to the Motor City jobsite and spoke to Gray; 25 that Gray then sent him from the Motor City jobsite to Colasanti, which does cement work, to fill out an application; that he went to Colasanti in Macomb County, Michigan and filled out an application; that he did not hear back from Colasanti; that Gray subsequently told him that Colasanti was not hiring at the time but that as soon as they were hiring he would try to get work for Taylor; that he has never had a conversation with Gray or Covington or anyone from Local 30 334 about his medical condition; that he was not experiencing any kidney problem in January 2006; that he did not find out that he had a problem with his liver until December 2006; and that during a break Gray (notwithstanding the fact that the witnesses were sequestered) said to him while he was going to the rest room that he, Taylor, should not have told the Board about the medical insurance.

35 On cross-examination Taylor testified that Gray did not know that he, Taylor, had medical problems in January 2006; that indeed, he, Taylor, did not know in January 2006 that he had any medical problem<sup>7</sup>; and that he did not tell anybody about filing an unfair labor practice. On recross Taylor testified that if a contractor puts him on a job, he can work without 40 going through the out-of-work list.

Walker testified that about 15 to 20 minutes after he first telephoned Taylor, Taylor called him back; that Taylor asked him what did he think about what Gray said and he told Taylor that if he wanted to go to work then he had to do what he had to do to go to work; and 45 that he told Taylor to get Covington to put it in writing "because you know how Mr. Covington is."<sup>8</sup> (transcript page 88)

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<sup>7</sup> Taylor testified that he was aware that he was a diabetic before December 2006.

50 <sup>8</sup> Counsel for General Counsel indicated that this was not being offered for the truth of the matter asserted.

On cross-examination Walker testified that Covington tells you one thing and it would be something different come tomorrow; that Covington does not keep his word sometimes; that when Taylor called him back Taylor asked him what he thought and he told Taylor that if he wanted to go to work, he should call Covington and ask him to put it in writing, namely that if  
5 Taylor drops the charges, Covington would put Taylor to work; that Taylor spoke with Dowdy who told him that if he did not drop the charges, they were going to press charges against his cousin; and that this is when he heard about the charges again.

On rebuttal Taylor testified that after he finished speaking with Gray he telephoned  
10 Walker; that regarding being able to work at the Motor City Casino jobsite if he dropped the charges against the Union, Walker told him to "make sure they put it in writing" (transcript page 307); that subsequently he spoke with Dowdy in an attempt to speak with Covington, who was not there at the time, but he never told Dowdy, who said that he knew what it was about and he did not want to get in the middle of it, that he wanted Covington or the Local to put the  
15 commitment in writing; and that he did not follow through on Walker's recommendation because he wanted to speak personally with Covington.

According to Taylor's testimony, at about 1 p.m. the same day Gray made him the offer, he telephoned Gray and asked him if he had heard from Covington. Taylor testified that Gray  
20 told him that he had left a message for Covington on his cell phone, Covington had not got back with him, and as soon as he heard from Covington he would telephone Taylor.

On cross-examination Taylor testified that while his January 31 affidavit to the Board in Case 7-CB 15053 indicates that 'Later that same day [(January 24)] Darryl Gray called me at home,' (transcript page 47) this statement is not accurate; that this affidavit does not describe  
25 Gray as a steward but rather indicates 'Gray is the union former president and is currently a union member' (transcript page 48); that he has known Gray for over 20 years; that he has met Gray socially; that the first time he voted for Gray he was running with Covington; that the second time he voted for Gray he was on an opposition slate to Covington; that Gray was not  
30 his steward; that Gray was the job steward at Motor City Casino; that he has had Gray's cell phone number ever since Gray had a cell phone; that Gray has had his cell phone number for about 5 years; that the January 31 affidavit does not indicate that Gray requested his brother or Taylor for the Motor City job; that he forgot to tell the Board agent that Gray said that he  
35 requested him, Taylor, out for the Motor City job; that Gray was somebody whose connections might be able to get somebody a job without going through the hall; that there are some jobs where the employer can hire people without going through the hall; that 5 or 6 years ago when Covington was a dispatcher at the Union, Covington sent him to the GM Tech Center where he got a job; and that many years ago when Covington was a foreman he picked him out of a line or a crowd of laborers at the jobsite to work a furnace job.

On redirect Taylor testified that Gray, who was President of the Union at the time, and Walker, who was the foreman on the job, got him a job with Kerry Sunger; that he did not get  
40 this job through Local 334; and that the hall did not dispatch him to that job.

Dowdy testified that he did not have any conversations with Gray relating to the case that was filed by Taylor; that Gray never approached him about the case that was filed by Taylor; and that Gray, at the time of the trial herein, had not been removed as steward on the Motor City Casino job by Covington but Gray has not been working at the jobsite in his capacity  
45 as union steward because of the injury he suffered in an automobile accident.

Covington testified that he and Taylor did not have any direct conversations about Taylor's Board charge; that he and Walker did not have any direct conversations about Taylor's  
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Board charge; and that he and Gray did not have any conversations about Taylor's unfair labor practice charge.

5 According to Walker's testimony, at about 3:30 p.m. on about January 26, or about two days after his above-described conversations with Taylor, Taylor telephoned him and told him that he, Taylor, had spoken with Dowdy who told Taylor that "Scott wasn't going to sign that and Scott said that if he -- if Mr. Taylor pressed charges on him -- Mr. Covington, then Mr. Covington is going to press charges on me for unlawfully ... [withdrawing] my annuity money." (transcript page 89) Walker further testified that he told Taylor that he would get back with him because he was on his way down to the Union hall; that 5 minutes later he was in the Union hall; that 10 Covington was not at the Union hall and he spoke with Dowdy; that he told Dowdy to tell Covington to do what he needed to do with respect to pressing charges against him but Covington should keep his, Walker's, name out of what was going on between Covington and Taylor; and that Dowdy said "no Mike, that ain't what Scott meant, he didn't mean it like that...." 15 (Id. at 91)

On cross-examination Walker testified that his discussion with Taylor about the annuity fund problem came after Gray telephoned him asking for Taylor's telephone number; that he first heard about the annuity problem in December 2005 when Covington told him that some 20 members had filed for their annuity unlawfully and his, Walker's, name was included in the discussion; that he told Covington that his paperwork was in order; that Covington subsequently told the assembled membership at a Union meeting that 10 or 13 members had taken money from the annuity fund fraudulently, he would not seek to bring charges against the members, but he would bring charges against the ringleader; that Covington did not name the members at the 25 Union meeting; that Covington did not say that he himself was pressing charges; and that he spoke with Dowdy about trying to arrange a meeting with Covington.

Covington testified that he first spoke with Walker about the fraud investigation after the union meeting where he announced to the membership what was going on with the 30 investigation of falsified documentation used to obtain annuity funds; and that after the union meeting he told Walker that his name was on one of the 13 documents that was suspicious but that he did not have to worry because at that time the trustees of the fund told him that they would not go after the members but rather would press charges against the "top person." (transcript page 162)

35 Walker testified that he spoke with Dowdy about trying to arrange a meeting between him and Covington; and that the meeting never occurred.

40 Dowdy testified that Walker telephoned him at the office wanting to know if he and Taylor could meet with Covington to discuss "the matter" (transcript page 141); that Walker told him that his name had been brought up regarding possible prosecution over something to do with the annuity money; that Walker said that Covington should not be thinking about prosecuting any of the members; that he told Walker that Covington did not want to prosecute any of the members and he had been working with the pension board to just proceed against 45 those people who provided the false documentation; that he assumed that the meeting with Covington "was to do with the NLRB case" (transcript page 142); that "I honestly don't recall if he said that specifically" (Ibid); that he told Covington about Walker's request and Covington told him that he was going to follow the advice of the Union's attorney; and that he did not advise Walker that there would be no meeting.

50 Covington testified that Dowdy did report his conversation with Walker to him and told him that Walker and Taylor wanted to meet with him; that Dowdy told him that Walker was

worried about him pressing charges over the annuity fraud; and that he told Dowdy that if the meeting had anything to do with the NLRB charge, he could not speak with Taylor and Walker about it. On redirect Covington testified that Walker wanted to talk but he would not talk with Walker because of the advice of the Union's attorney; and that neither Taylor nor Gray talked to him about a deal.

Taylor filed a charge with the Board on April 3 in Case 7-CB-15148 against the Union, naming Covington as the Union representative to contact, General Counsel's Exhibit 4. The charge alleges that in the last six months, the Union has refused to dispatch Taylor for reasons that are arbitrary and capricious and because Taylor filed a charge against the Union with the Board. As indicated below, this charge was also dismissed by the Board.

Taylor testified that about 7 p.m. on April 6 he telephoned Gray on Gray's cell phone

and [Taylor] wanted to know what was going on. Mr. Gray told me that he never heard from ... Covington. But ... Covington - - guys that filed charges against Local 334, ... Covington usually blackballed the guys that go against Local 334. I told Mr. Gray that I felt like I was already blackballed and that ... Covington couldn't do anything else to harm me. [Transcript page 29]

On cross-examination Taylor testified that when he telephoned Gray at 7 p.m. Gray

told me that he hadn't heard from Mr. Scott Covington. And that usually Mr. Covington blackballs guys that go against the union. And I told Mr. Gray that I felt I was already blackballed and that Mr. Covington couldn't do any more harm to me.[Transcript page 59]

Taylor further testified that Gray said that Covington "usually blackballed guys that go against the union and file charges with the NLRB" (Id. at 60); and that in his April 19 affidavit to the Board he indicated 'Scotty -- meaning Covington -- usually blackballed guys that go against the union.' (Id. at 61)

On cross-examination, Taylor testified that the statement in his April 19 affidavit to the Board in Case 7-CB-15148 that 'Later the same day, Darryl Gray called me at home' (transcript page 49) is incorrect; that Gray is described in this affidavit as follows: 'Gray is a former president and is currently a union member' (Id. at 50); that he told the Board agent that Gray was a steward; that he told the Board agent that the affidavit was wrong; that he did not ask the Board agent to change the affidavit; and that the April 19 affidavit indicates that Gray requested his brother for the Motor City job.

Gray testified that he never said anything to Taylor about being blackballed by Covington and the Local for filing charges.

On cross-examination, Taylor testified that the statement in his June 27 affidavit to the Board in Case 7-CB-15224 that 'Later the same date Darryl Gray called me at home' (transcript page 51) is incorrect; that he did not bring this error to the attention of the Board agent who took the statement; that Gray is described in this affidavit as follows: 'Gray is a former president and is currently a union member' (Id. at 52); that he did not tell the Board agent that the affidavit should indicate that Gray was a steward; that he did not tell the Board agent that Gray was a union steward because Covington can pick whoever he wants as a union steward; that he never did tell the Board agent that Gray was a union steward; and that the June 27 affidavit indicates that Gray requested his brother for the Motor City job.

The parties agreed to the authenticity and admissibility of Respondent's Exhibits 1 and 2. The former is the Summary Report of Region 7 of the Board in Case 7-CB-15053. The latter is the Summary Report of Region 7 of the Board in Case 7-CB-15148. Both refer to charges filed by Taylor against the Union. In the former, Taylor alleged that the Union failed to operate its exclusive hiring hall in a lawful manner and refused to dispatch him to jobs in the last six months. In the latter, Taylor alleged that the Union failed to dispatch him for work for arbitrary and capricious reasons and because he filed a charge against the Union with the Board. Both charges were dismissed by the Region which indicated in both instances that Taylor was not eligible for dispatch through the hall until January 6, 2006; and that there was insufficient evidence to establish that the Union breached its duty of fair representation to Taylor by failing to dispatch him.<sup>9</sup>

<sup>9</sup> Respondent introduced five letters from Region 7 of the Board to Respondent's attorney, Bruce Miller. Collectively, they refer to these two cases and the instant proceeding. Chronologically, in the first, Respondent's Exhibit 3 dated February 17 - which refers to Case 7-CB-15053, the Board (a) indicated that Taylor alleged that the Union (1) refused to refer him to work for the last three years, (2) operates an exclusive hiring hall while claiming the opposite, and (3) indicates that it would pursue legal action against members who assertedly withdrew their pension benefits illegally if Taylor proceeded with this unfair labor practice, and (b) requested that the Union (1) provide certain information, and (2) respond to the allegations, including the allegations that (i) Taylor was informed on January 24 that if he pursued the Board charge, the Union would press charges against 13 members (including Walker) whose pension paperwork was not right, (ii) Taylor was later informed that Union "President" Covington wanted him to drop the charges, and (iii) "Doughty" (apparently referring to Dowdy) confirmed the threat in a separate conversation. In the second, Respondent's Exhibit 8 which is dated April 19 and refers to Case 7-CB-15148, the Board (a) indicated that Taylor alleges that the Union refused to dispatch him to work for reasons that are arbitrary and capricious and because he filed a charge with the Board, (b) requested Miller to provide certain information, and (c) requested Miller to respond to the allegations, including the allegations set forth in the Board's February 17 letter, as described in (b)(2) above. In the third, Respondent's Exhibit 7 which is dated April 26 and refers to Case 7-CB-15148, the Board requested Miller to ascertain whether Gray was an agent of the Union, and to respond in writing by May 3 if it is the Union's position that Gray is not an agent of the Union or it would be assumed, consistent with Respondent's prior position, that Gray is not an agent of the Union. In the fourth, Respondent's Exhibit 6 which is dated May 11 and which refers to Case 7-CB-15148, the Board requested (a) to schedule a date to take Gray's affidavit, and (b) a response to the allegations that (1) in January 2006 Union steward Gray told employees that he was attempting to get Taylor working on site with him at the Motor City Casino but could not do so because Taylor filed charges, but if Taylor dropped the charges he would be able to get work on the site, and (2) on April 17 Union steward "Gray informed employee(s) during a discussion that involved the NLRB charge(s) that the Union President normally blackballs employees who go against the Union." (Emphasis added) And in the fifth, Respondent's Exhibit 4, which is dated June 27 and which refers to Case 7-CB-15244, the Board requested that the Union present (a) witnesses for the taking of affidavits, or (b) a written position statement responding to the allegations that in January 2006 Union Steward Gray threatened Union members by informing them they could not be dispatched to work until they withdrew their NLRB charges, and that on April 17 Union Steward Gray threatened employees by informing them that they would be discriminated against if they decided to go against the Union. Also, Respondent introduced a letter (with an attachment, namely the minutes of the October 28, 2005 Laborers' Annuity Fund Board of Trustees' Meeting) dated March 21, Respondent's Exhibit 9, from the legal counsel of the Laborers' Annuity Fund to Region 7 of the

Continued

On rebuttal Taylor testified that he filed a number of charges with the Board; that some of those charges had to do with not getting work through the Hall; and that some of those charges had to do with being threatened by the Union.

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Covington subsequently testified that he heard about the allegations involved herein about several months before he testified at the trial in this proceeding; that he believed he learned of the allegations from Dowdy; that he sent Field Agent Rick Williams, who goes to each of the jobs in the involved area, to find out what was going on and if the allegations had any basis in fact; and that Williams reported back to him that in his opinion it was all frivolous.

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Taylor testified that he has not received any work through the Union since January 1.

Dowdy testified that the Motor City job was still going on when he testified at the involved trial on February 13, 2007; that Gray was not one of the stewards on the job because of the injuries Gray suffered in the aforementioned automobile accident; and that whether Gray, absent his injuries, would still have been working at Motor City in February 2007 would depend on whether the contractor he was working for was still working at the jobsite. Dowdy testified that he was not sure if the contractor was still there.

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Gray testified that if he had not been injured in the automobile accident, he would still be at the Motor City Casino jobsite serving as a Union steward if the company he worked for, Colasanti, was still there.

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#### Analysis

Paragraph 8 of the complaint alleges that in January 2006 Respondent, by its agent Gray, in a telephone conversation, threatened employees that the Charging Party would not be dispatched to work at the Motor City Casino jobsite unless he withdrew the unfair labor practice charge he filed against the Respondent.

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Counsel for General Counsel on brief, citing *Longshoreman Local 1814 v. NLRB*, 735 F.2d 1384, 1394 (D.C. Cir. 1994), cert denied 469 U.S. 1072 (1984), *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988), and *Electrical Workers Local 357 (Newtron Heat Trace, Inc.)* 343 NLRB 1486, 1498 (2004), contends that Gray was Respondent's actual and apparent agent when Gray unlawfully threatened Taylor about his Board charge filing activities; and that a union may neither unlawfully impede its members' employment nor their access to the Board's processes, *Operating Engineers Local Union 450*, 267 NLRB 775, 791 (1983) and *Plumbers and Pipefitters Local No. 403*, 261 NLRB 257, 269 (1982).

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Respondent on brief contends that Gray was not an agent when he made the alleged statements to Charging Party in that the Union did not grant actual authority to Gray to make the alleged statements and General Counsel has failed to demonstrate that Gray had apparent authority<sup>10</sup>; that the allegations regarding the first conversation do not constitute a threat since

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Board, responding to the Board's request for information about when, how and from whom the Fund learned about possibly fraudulent Social Security Administration Disability documents being used as evidence of a participant's eligibility for a lump sum Disability Benefit from the Annuity Fund.

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<sup>10</sup> Interestingly, at page 10 of its brief Respondent makes the following argument:

Furthermore, there is a presumption that elected officials are agents of the union; in

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Gray's statement was not accompanied with the corresponding threat of repercussions or punishment for refusal to withdraw the charges; and that neither the Union nor Gray informed Taylor that he had to drop his charge before he would be placed on a job.

5 In my opinion, Respondent violated the Act as alleged in paragraph 8 of the complaint. In *NLRB v. Longshoremen (ILWU) Local 10 (Pacific Mountain Ass'n)*, 283 F.2d 558, at 560-565 (9th Cir. 1960) the court indicated as follows:

10 In the spring of 1957, Satchell [the alleged discriminatee] and others instituted a law suit to regain membership in respondent Local 10. From that time on, until January, 1958, when the present charges were heard before the ... [now Administrative Law Judge], Satchell was dispatched with regularity to longshore jobs on the San Francisco Bay waterfront. [Footnote omitted] On three occasions, however, he was prevented from  
15 working at the job to which he was dispatched. These occasions provide the grounds for the unfair labor practices charged against respondents.

20 On a date near or about July 27, 1957, Satchell was 'dispatched' to Encinal Terminal, Alameda, for work. .... Satchell encountered a steward of Local 10. The steward, addressing two other longshoremen who were present, said 'This fellow is suing the union. He can't work here. .... Satchell ... left the dock ....

25 On August 24, 1957 Satchell was 'dispatched' to a job at Pier 30 in San Francisco. .... Local 10's ... steward .... [who] was the ... [same steward Satchell encountered] in July at the Encinal Terminal, ... again ... told Satchell that he could not work on the waterfront. .... [Subsequently] Satchell left.

30 On October 19, 1957, Satchell was dispatched to Oakland Army Base. [There] the steward ... [told him] 'You're the one suing the union, aren't you?' The steward then found the gang boss and said to him 'you can't work this guy. He's suing the Union.' .... Upon leaving the dock, Satchell ran across another union steward who informed him that the 'Stewards Council' had ordered the stewards to discharge all of those individuals who were suing the union every time any one of them came to work.

35 The ... [Administrative Law Judge, as here pertinent,] ... found that Local 10 was responsible for the behavior of its stewards, that the stewards restrained and coerced Satchell on a date near or about July 27, on August 24 and on October 19, in the exercise of rights guaranteed in § 7 of the Act, ..., and that Local had thereby thrice committed the unfair labor practice proscribed by §8(b)(1)(A) of the Act ....

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*Penn Yan Express, Inc.*, 274 NLRB 449 (1985), the Board stated, 'the holding of elective office is persuasive and substantial evidence that the officer is an agent, absent compelling contrary evidence,' *Id.* at 449. No such presumption is available for appointed positions.

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Subsequently, on the same page of its brief, Respondent cites *Pratt Towers, Inc.*, 338 NLRB 61, 73 (2002) for the two factor test to find apparent authority. What Respondent does not note in its brief is that on page 73 of *Pratt Towers, Inc.*, *supra*, the following appears: "Further, elected or appointed officials of an organization are presumed to be agents of that organization clothed with apparent authority. *Nemacolin Country Club*, 291 NLRB 456, 458 (1988), *enfd.* 879 F.2d 858 (3d Cir. 1989)." (emphasis added) Respondent itself provides the authority which contradicts the position Respondent takes.

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The Board [,as here pertinent,] accepted the ... [Administrative Law Judge's] conclusions ....

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[The court went on to indicate that] [d]espite respondent's protestations to the contrary, we think the question boils down to one of Satchell's credibility. ....

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Credibility is peculiarly the province of the ... [Administrative Law Judge]. [Citations omitted] His evaluation of oral evidence ... will not be disturbed unless the testimony which he credits is hopelessly or inherently incredible. [Citations omitted] .... Since Satchell's testimony dominates the record before us, and since we accept the credence accorded Satchell by the ... [Administrative Law Judge], we conclude upon the record as a whole that the Board's findings of fact are supported by substantial evidence.

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#### The Agency Problems

The Taft-Hartley amendments to the National Labor Relations Act outlawed for the first time unfair labor practices committed by a labor organization or its agents, 29 U.S.C.A. §158(b). .... Taft-Hartley provided that 'in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.' 29 U.S.C. A. §185(e).

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.... Since unions were also held responsible for the acts of their agents, Taft-Hartley rendered common law principles of agency equally applicable to both labor and management groups. [Citations omitted] .... Consequently, the responsibility of ... Local 10 ... for the acts of the union stewards must be determined in light of the general law of agency. [Footnote omitted]

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Local 10's constitution provides that each longshore gang shall elect a gang steward and that the stewards working on any one dock shall elect a dock steward. .... In part at least, a steward of Local 10 acts as a watchman. He is charged with the duty to make sure that all of the workers within his orbit fulfill the requirements ... [(only members of respondent International or 'permit' men, who need not be union members, are working and that all such men are paid up in their dues)]. And impliedly, he is clothed with the power to take on-the-spot action in regard to those workers who do not meet the prescribed standards. For without such implied power the steward could not properly carry out the sentry's task assigned to him by the Local. [Citations omitted] The actions taken by the stewards to prohibit Satchell from working were within the general class of conduct impliedly authorized by the Local; that is to say the stewards' actions were designed to insure that certain longshoremen did not work on the waterfront. That this general power was directed against Satchell, who was not among the particular group of longshoremen against whom the power should properly have been used, does not absolve Local 10 from responsibility under ordinary principles of agency law. [Citations omitted] Indeed the present situation is not unlike that of an employee who is authorized to cut down designated trees belonging to his employer and who with zeal to increase the employer's profits fells timber belonging to a third party. See Restatement, Agency 2d §229 Comment a., Ill. 1 (1958). The Local authorized its stewards to safeguard advantages secured by the union at the bargaining table, yet the stewards exercised

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their power to achieve advantages to which the union was not entitled. Having created the stewards' power, the Local must take the responsibility if it is wrongly used. [Citations omitted]

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10                   ... in the present case ... the record before us indicates that the actions against Satchell were isolated occurrences and ... the Local apparently had no established policy of keeping those who were suing the Union off the job. Nonetheless, it is beyond doubt that an agent may well be acting within the scope of his authority even when he commits an act specifically forbidden by his principal. [Citations omitted] Consequently, the absence of a union policy supporting the actions taken by the stewards against Satchell is inconclusive. The stewards acted within the general scope of the authority provided for in the Local's constitution, and the Local remains responsible for their  
15                   conduct.

20                   In the case at hand, Gray, at least at one point, concedes that he spoke with Taylor by telephone on or about January 24, and he told Taylor that he would try to get Taylor a job at the Motor City Casino if Taylor dropped the charges against the Local. Gray concedes that before he spoke with Taylor he had already made the request through the foreman for two guys to be sent to the Motor City Casino job, namely Taylor and Gray's brother Mike.<sup>11</sup> It was no secret that the out-of-work list could be and was bypassed. Gray's brother Mike was sent to the Motor City Casino job. Taylor's testimony about his telephone conversation with Gray is credited. Gray  
25                   lied under oath about Taylor telling him during this telephone conversation that he, Taylor, had a problem with his kidney. And Gray lied under oath about finding out from Taylor about the charges Taylor filed against the Union. Taylor denies telling Gray that he, Taylor, had a kidney problem, and it was not shown that Taylor ever had a kidney problem. Taylor's testimony that he did not tell Gray about the Board charges and he did not tell Gray that he, Taylor, had a kidney problem is credited. Taylor's testimony regarding what was said during this telephone  
30                   conversation is credited. As noted above, Taylor testified as follows with respect to this telephone conversation:

35                   [Gray] told me that he had requested me for the Motor City job and his brother, Mike. .... And he asked me -- he said he had heard about -- he was told about the charges that I had filed. And ... Covington wanted me to drop the charges. So I told Darryl [Gray] I would gladly drop the charges if I could go to work. Talked to ... Covington, let him know one hand wash[es] the other hand and I'd gladly drop the charges. [Transcript pages 25 and 26]

40                   Gray told Taylor that he had requested Taylor and Gray's brother Mike to be sent out to the Motor City Casino job. Gray concedes this. Gray then, in effect, told Taylor that he would not be sent out to the Motor City Casino job unless he, Taylor, dropped the charges he filed against the Union. Gray told Taylor that Covington, the Union's business manager, wanted Taylor to drop the charges. The fact that Taylor and Gray's brother Mike were not being sent to the Motor City  
45                   Casino job from the out-of-work list did not mean that Covington had no say in the matter. Covington did not deny Taylor's testimony that on various occasions before the January 24

50                   <sup>11</sup> As pointed out by Chief Judge L. Hand in *National Labor Relations Board v. Universal Camera Corp.*, 179 F.2d 749 at 754 (1950) "[i]t is not reason for refusing to accept everything that a witness says, because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all."

Gray/Taylor telephone conversation, he, Covington, told Taylor that (1) he, Covington, had to go by the out-of-work list in sending members out to job sites, (2) the Union now went by the rules in that it sent people out when their name came up on the out-of work list, (3) Taylor could not work at MGM Grand Casino if he got a job himself because he, Covington, was using the out-of-work list, and (4) he, Covington, told Taylor that if he got onto one of the casino jobs he could not stay, and "other guys have got on the job without going through the Hall, and he [Covington] was trying to stop it." (transcript page 295) Gray, a Union steward at the time, restrained and coerced Taylor in the exercise of rights guaranteed in Section 7 of the Act.

Did the Union thereby commit an unfair labor practice proscribed by Section 8(b)(1)(A) of the Act? Here, pursuant to the Union's constitution, Gray was appointed and supervised by business manager Covington. In this regard, the facts in the case at hand appear to provide more of a reason than *NLRB v. Longshoremen (ILWU) Local 10 (Pacific Mountain Ass'n)*, supra, to find that steward Gray was an agent of the Union. In *Local 10*, supra the steward was elected. There the steward's duties were scrutinized to determine whether he was an agent of the Local. Here not only do steward Gray's duties and privileges demonstrate that he was acting as an agent of the Union but Gray, unlike the steward in *Local 10*, supra, was appointed by the Union's business manager, Covington. Additionally, under the Union's constitution, business manager Covington supervised steward Gray. Taylor knew that the steward is appointed by the business manager. Taylor knew that he had not previously told Gray about the charges he had filed with the Board against the Union. Consequently, when Gray bought up Taylor's unfair labor practice charges Taylor knew that Gray got that information from someone else.<sup>12</sup> As concluded above, Taylor's testimony about what Gray said during the involved January 24 telephone conversation is credited. Gray told Taylor that he, Gray, had been told about the Board charges Taylor had filed against the Union. Gray told Taylor that Union business manager Covington, who under the Union's constitution appointed Gray as steward and supervised Gray, wanted Taylor to drop the charges. So not only was Gray cloaked with agency status as far as the Local was concerned in that (1) he was appointed and supervised by the Union's business manager, (2) he made sure that employees on the job where he is steward keep up with their union dues, (3) he enjoys super seniority regarding layoffs and recalls, (4) he apparently can (Gray testified that he could but he did not) file grievances as a steward,<sup>13</sup> and (5) he can, working through the

<sup>12</sup> It appears that the reason that Gray falsely testified that he learned from Taylor about his Board charges is that Gray belatedly gained an appreciation that he should not link Covington and knowledge of Taylor's Board charges. Also, it appears that this is the reason why Gray falsely testified that he did not say anything about Covington during his involved conversation with Taylor on January 24. But while denying that he said anything about Covington during this conversation with Taylor, Gray did admit, in response to Respondent's attorney's question, that he told Taylor if he dropped the charges against the Local, he, Gray, would try to help Taylor get a job. Subsequently Gray testified (a) "[t]here was nothing said during that conversation when I called him [Taylor] on the phone then [January 24]," when he, Gray, was asked "[d]uring that conversation, ... [on January 24] what, if anything, was said about Mr. Taylor's ... Board charges", and (b) "[n]o ...." when he, Gray, was asked "[d]id you ever discuss ... [Taylor's] filing charges after that car or curbside conversation with Mr. Taylor." (transcript page 286) Gray is not a credible witness.

<sup>13</sup> As noted above, Covington testified that the steward cannot write grievances. Covington, however, is not a credible witness. On this point Gray gave the following testimony:

Q. [MR. MILLER] Can you file grievances?

A. As a steward?

Q. Yeah.

A. Yes.

Continued

foreman on the job, have employees sent out to the job without going through the out-of-work list. But also what Gray told Taylor during this conversation demonstrates agency status. Gray, acting as agent for the Union through his supervisor - namely the Union's business manager, told Taylor that business manager Covington wanted Taylor to drop the charges he filed with the Board against the Union. This was done figuratively in the same breath that Gray told Taylor that he, Gray, had requested him for the Motor City Casino job and that he, Gray, would get back with him as soon as he got back with Covington. If one were to proceed under the apparent authority approach described in *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988), (1) there was some manifestation by the principal to a third party, and (2) the third party believed that the extent of the authority granted to the agent encompassed the contemplated activity. Here the manifestation by the principal to a third party occurred when the business manager appointed and supervised Gray as the steward on the Motor City job. Taylor knew that the steward was appointed by the business manager. Taylor believed that the authority granted to agent Gray encompassed speaking on behalf of his supervisor, the man who appointed Gray, with respect to the conditions whereby Taylor would be allowed to work at the Motor City Casino jobsite. In view of the circumstances existing here, a member would reasonably conclude that Gray was speaking and acting for Covington and the Union.

With respect to the possibility of repudiation, Covington gave the following testimony:

JUDGE WEST: .... With respect to the allegations in the complaint involved in this proceeding, with respect to the first, [namely] in January of 2006, Respondent by its agent, Darryl Gray, in a telephone conversation threatened employees that the charging party would not be dispatched to work at the Motor Coty Casino jobsite unless he withdrew the unfair labor practice charge he filed against the Respondent. When did you first become aware of that allegation?

THE WITNESS: It's been going on -- it's been a couple of months. It's been several months now.

JUDGE WEST: It's been several months since you were made aware of that allegation?

THE WITNESS: That I've heard that allegation was made.

JUDGE WEST: How did you hear the allegation was made?

Q. Have you ever filed a grievance on a job --

A. No.

Q. -- at Motor City?

A. No.

Q. Have you ever filed a grievance anyplace?

A. Yes, when I was an agent.

Q. As a steward?

A. No. [Transcript pages 265 and 266]

And on cross-examination Gray gave the following testimony:

Q. BY MR. COCKRELL; Mr. Gray, you testified -- correct me if I'm wrong, you testified that you did not file grievances as a Union steward. Is that correct?

A. Correct. [Transcript page 275, with emphasis added]

THE WITNESS: I'm not 100 percent, but I want to say it was my dispatcher Mr. Glen Dowdy.

JUDGE WEST: Okay.

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THE WITNESS: A lot of times you get, Your Honor, you have -- I remember us hanging around in our lobby and people talk. A lot of times you'll catch conversations.

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JUDGE WEST: Did you do anything to repudiate that allegation when you first heard it?

THE WITNESS: What do you mean, sir?

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JUDGE WEST: In other words, it's alleged that Mr. Gray, a steward who you supervise, said something to someone else. When you heard that it was being alleged that he said something to someone else did you contact Gray to disabuse him as -- of his impression or his understanding of the situation?

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THE WITNESS: I asked my field representative who goes out into each of the jobs in that geographical area to find out what was going on [with respect to both of the allegations in the complaint]; is there any fact to this base? He reported back to me that they couldn't prove this, that this -- to his opinion it was all frivolous. [Transcript page 200 to 205]

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Subsequently the Union's attorney elicited the following testimony from Covington:

Q. BY MR. MILLER: You're aware, are you not, that Mr. Gray made a statement under oath in my office in connection with this matter?

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A. Pardon me, sir?

Q. I say are you aware that Mr. Gray made a statement under oath in my office with reference - -

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A. Yes.

Q. - - to this matter? And you read the statement under oath in my office with reference - -

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A. I was not there.

Q. And in that statement Mr. Gray denied that - -

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MR. COCKRELL: Objection, Your Honor. Leading.

JUDGE WEST: Overruled.

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Q. BY MR. MILLER: And in that statement Mr. Gray denied any involvement with Mr. Taylor?

A. Yep, that's correct. [Transcript pages 203 and 204, with emphasis added]

In other words, before Gray testified at the trial herein, the Union's position basically was that it never happened; Gray did not have the alleged January 2006 conversation with Taylor. As noted above, when he testified at the trial herein Gray did not deny any involvement with Mr. Taylor. Gray concedes that he had a January 2006 conversation with Taylor. Gray's actions were not repudiated by Covington or the Union. Indeed, initially the Respondent refused to even acknowledge them. This is interesting in that when Miller, Respondent's attorney, called Union steward Gray, Miller attempted unsuccessfully to be allowed to treat Gray as a hostile witness. Notwithstanding his failure to demonstrate that Gray was a hostile witness, Miller proceeded to use leading questions to elicit testimony which referred to matters beyond those which were necessary to develop Gray's testimony. Counsel for General Counsel objected. To the extent that Miller elicited testimony from Gray with leading questions which referred to matters beyond those which were necessary to develop Gray's testimony, it negatively affected the weight to be accorded Gray's testimony. Moreover, as noted, I did not find Gray to be a credible witness. With respect to Covington, Miller, as noted above, elicited "Yep, that's correct" (transcript page 204) in response to Miller's question "And in that statement Mr. Gray denied any involvement with Mr. Taylor." (transcript page 203) This raises a question in that if Miller had in his possession a sworn statement from Gray that he did not have any involvement with Taylor, and if Miller truly viewed Gray as a hostile witness, why didn't Miller use Gray's supposedly inconsistent prior sworn statement to impeach Gray? One is allowed to impeach one's own witness. With his "Yep, that's correct" (transcript page 204), Covington left the impression he was aware that Gray swore in his statement that he did not have any involvement with Taylor. Since no attempt was made to introduce the allegedly prior inconsistent statement of Gray and it was not used in questioning Gray, one is left to wonder if Covington was lying under oath when he replied "Yep, that's correct" (transcript page 204) in response to Miller's question "And in that statement Mr. Gray denied any involvement with Mr. Taylor." (transcript page 203) Covington's testimony that Taylor tried to give him a baggie when he approached Covington at the Sanchez funeral is also interesting. Was Covington hoping to convey the impression that Taylor was trying to give Covington some illicit substance to curry favor and thereby be allowed to work at one of the Casino jobsites? Taylor denied under oath that he tried to give Covington a baggie. I find Taylor to be a credible witness. I find that Covington lied under oath with respect to the baggie. I did not find Covington to be a credible witness.

Gray was Respondent's agent under either an actual or apparent authority analysis.<sup>14</sup> The Union has to accept the responsibility for what Gray said to Taylor during the involved January 24 telephone conversation. Counsel for General Counsel has shown that an agency relationship existed with regard to what Gray told Taylor during the involved conversation on January 24. The Respondent created the situation. The Respondent violated the Act as alleged in this paragraph.

Paragraph 9 of the complaint alleges that on or about April 17, Respondent, by its agent Gray, in a telephone conversation, threatened employees that it 'blackballs' employees who go against the Respondent.

Counsel for General Counsel on brief contends that a union respondent violates 8(b)(1)(A) of the Act by threatening economic retaliation in connection with conduct protected under the Act where the context of the threat reasonably suggests a connection between a union member's Board charge filing activity and their employment, *United Steelworkers of America, Local 8061*, 226 NLRB 403, 407 (1976); and that the test is an objective test,

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<sup>14</sup> See note 10 supra.

*Laborers' Local 496*, 258 NLRB 1105, fn. 2 (1981).<sup>15</sup>

Respondent on brief contends that even crediting the testimony of Taylor, Gray did not threaten Taylor when he informed Taylor that Covington blackballs members who go against the Union; and that there is evidence that Gray's statement did not have any coercive effect on Taylor.

In my opinion, Taylor, notwithstanding the unintentional shortcomings brought out by Respondent's attorney, is a credible witness. Gray was not a credible witness. In my opinion, Gray intentionally lied under oath at the trial herein a number of times. Taylor's testimony about what Gray said to him on April 6 is credited. Gray did not try to shed any light on whether his statement to Taylor was an observation on Gray's part, an explanation of why Taylor was not being sent to the Motor City Casino job, or a threat. Gray denies even making the statement. So there was not even an attempt on Gray's part to explain what he meant in making this statement. Moreover, in determining whether a statement is coercive, the law views such statements objectively and not subjectively. Viewed objectively, a reasonable person could and undoubtedly would, especially in the circumstances of this case, view such a statement as a threat which would tend to restrain or coerce Taylor with respect to rights guaranteed him under the Act.<sup>16</sup> Respondent violated the Act as alleged in paragraph 9 of the complaint.

#### Conclusions of Law

1. Detroit Building Group, LLC is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Local 334, Laborers' International Union of North America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By, (a) in January 2006, threatening employees that the Charging Party would not be dispatched to work at the Motor City Casino jobsite unless he withdrew the unfair labor practice charge he filed against the Respondent, and (b) on or about April 17, threatening employees that it "blackballs" employees who go against the Respondent, Respondent violated Section 8(b)(1)(A) of the Act.

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

#### 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.

<sup>15</sup> As pointed out by the Board in note 2 in its decision, "[t]he test is whether the remark tended to restrain or coerce employees in the rights guaranteed them ... [under] the Act."

<sup>16</sup> In *NLRB v. Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO*, 391 U. S. 418 (1968) the Court held that a charge by an employee member who filed a charge with the Board that he was discriminated against because he engaged in certain protected activity was a sufficient way to allege an impairment of Section 7 rights notwithstanding that Section 7 does not say anything about any right to file charges with the Board.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>17</sup>

ORDER

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The Respondent, Local 334, Laborers' International Union of North America, its officers, agents, and representatives, shall

1. Cease and desist from

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(a) Threatening employees that the Charging Party would not be dispatched to work at the Motor City Casino jobsite unless he withdrew the unfair labor practice charge he filed against the Respondent.

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(b) Threatening employees that it "blackballs" employees who go against the Respondent.

(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.

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

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(a) Within 14 days after service by the Region, post at its union office in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, 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. 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 members and former employees and members employed and represented by the Respondent at any time since January 2006.

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(b) Sign and return to the Regional Director sufficient copies of the notice for posting by Detroit Building Group, LLC, if willing, at all places where notices to employees are customarily posted.

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<sup>17</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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<sup>18</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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.

5 Dated, Washington, D.C., April 16, 2007

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John H. West  
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

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

10 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

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

20 WE WILL NOT threaten you that you will not be dispatched unless you withdraw unfair labor  
practice charges you file against LOCAL 334 LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA.

25 WE WILL NOT threaten you that we "blackball" employees who go against LOCAL 334  
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA.

LOCAL 334 LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA  
\_\_\_\_\_  
(Labor Organization)

30 Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

35 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.nlrb.gov](http://www.nlrb.gov).

40 477 Michigan Avenue, Federal Building, Room 300  
Detroit, Michigan 48226-2569  
Hours: 8:15 a.m. to 4:45 p.m.  
313-226-3200.

45 **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, 313-226-3244.

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