International Brotherhood of Electrical Workers, Local 357, AFL–CIO (Newtron Heat Trace, Inc.) *and* Michael J. Cieklinski *and* Richard Brian Henderson. Cases 28–CB–5957 and 28–CB–6013

December 16, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On June 15, 2004, Administrative Law Judge Lana H. Parke issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified and set forth in full below.

The Make-Whole Provisions for Unidentified Travelers

The judge found, and we agree, that the Respondent violated Section 8(b)(1)(A) by restraining and coercing three travelers[3] (members of sister local union, who seek work in the Respondent's jurisdiction) into surrendering job referrals to the Respondent's members. The Respondent's coercive conduct, directed at the three travelers, included verbal harassment and threats by groups of union members occurring in the hiring hall and the hiring hall parking lot. This conduct occurred on four dates over a 6-month period starting on March 7, 2003.

In fashioning a remedy for the Respondent's unlawful conduct, the judge properly directed the Respondent to make whole these three travelers whom the Respondent coerced into surrendering dispatches. However, the judge also directed the Respondent to make whole "other travelers affected by Respondent's unlawful conduct." The judge further directed that "[d]etermining the identities and job opportunity losses of and giving notification to such travelers as may have been coerced is left to the compliance stage of this matter."

The Respondent excepts to the judge's extension of the make-whole remedy beyond the three identified travelers. As explained below, we find merit to this exception and we modify the judge's recommended Order to limit the make-whole remedy to the three identified travelers.

In fashioning its remedial order, the Board generally requires the respondent to make whole those persons who lose earnings as a result of an unfair labor practice. Where affected persons remain unidentified at the conclusion of the unfair labor practice hearing, the Board sometimes requires the respondent to make them whole, deferring their identification to compliance proceedings. However, the Board will order the respondent to make whole such unidentified persons only where they constitute a "defined and easily identified class." *Electrical Workers Local 48 (Oregon-Columbia NECA)*, 342 NLRB 101, 110 (2004).[4]

The judge here required the Respondent to make whole unidentified travelers and deferred identification of these travelers to compliance proceedings. However, the judge did so without addressing the threshold issue of whether the unidentified travelers constituted a "defined and easily identified class." Further, on this record, we find that there is no "defined and easily identified class" sufficient to warrant a broader make-whole order.

In order to be within the defined class entitled to a make-whole remedy for the Respondent's coercive conduct, a traveler had to (1) know of the coercive conduct, (2) decline a referral after learning of the coercive conduct, and (3) be motivated by the coercive conduct. Although the record establishes that the named discriminatees met all three of these requirements, there is no evidence that any other traveler met any of them. Indeed, with regard to whether a traveler's decision to decline a referral was motivated by the coercive conduct, the evidence affirmatively shows that travelers regularly de-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found, and we agree, that the Respondent violated Sec. 8(b)(1)(A) by refusing a hiring hall registrant's request for a copy of the October 3, 2003 side list. However, we note that the hiring hall registrant who made the request was Brian Henderson, not Michael Cieklinski as the judge stated.

[2] In her conclusions of law, the judge found that the Respondent violated Sec. 8(b)(1)(A) by "[m]aintaining at its hiring hall a side-list practice and procedure whereby travelers surrendered employment referral opportunities to permit dispatch of Local 357 members, and applying said side-list practice to Mr. Cieklinski, Mr. Henderson, Mr. Nairn, and other travelers." We note that the Respondent here maintained its side-list practice in the context of coercive conduct enforcing the practice. We find it unnecessary to reach the issue of whether the Respondent's mere maintenance of the side-list practice would have violated Sec. 8(b)(1)(A) in the absence of coercive conduct enforcing the practice.

[3] Michael Cieklinski, Brian Henderson, and Allan Nairn.

[4] Accord: *Iron Workers Local 433 (Reynolds Electrical),* 298 NLRB 35, 36 (1990), enfd. mem. 931 F.2d 897 (9th Cir. 1991); *Laborers Local 158 (Contractors of Pennsylvania)*, 280 NLRB 1100, 1101 (1986), enfd. mem. 865 F.2d 251 (3d Cir. 1988).

clined referrals in favor of local members even in the absence of coercive conduct. In short, there is no crisp, clean line of demarcation separating the coerced from the uncoerced among the travelers who declined referrals in favor of local members. The fact that the class definition is not a "single, readily ascertainable, and definitive trait" or a "single objective measure" argues against providing a make-whole remedy for the unidentified travelers. *Laborers Local 158 (Contractors of Pennsylvania)*, supra, 280 NLRB at 1101. For these reasons, we find that the unidentified travelers who may have lost job opportunities as a result of the Respondent's coercive conduct do not constitute a "defined and easily identified class." *Electrical Workers Local 48 (Oregon-Columbia NECA)*, supra (granting a make-whole remedy to unidentified persons where they could be identified from several readily identifiable classes of unlawfully preferred registrants—e.g., "salts"—but not to persons who could not be so identified). Accordingly, we will not extend the make-whole remedy to them.

The authorities cited by our dissenting colleague, in which the Board provided a make-whole remedy for unidentified discriminatees, are distinguishable. In both *Sachs Electric Co.*,[5] and *Electrical Workers Local 697 (UE & C Catalytic),*[6] the union was shown to have taken affirmative action, including making directly coercive statements, to impel the travelers employed by a particular employer at a specific worksite to quit their jobs in favor of local union members. Shortly thereafter, *all* of those travelers ceased working for the respective employer, some by quitting, although there was no evidence that travelers had quit voluntarily in the past. Accordingly, each traveler's motive for quitting could reasonably be inferred without relying primarily on credibility findings. Because the unnamed travelers and their termination dates could also be easily identified from the employer's payroll records, the Board provided a make-whole remedy for all those who quit, not just for those identified by name in the initial proceeding.[7] In short, the unidentified discriminatees in *Sachs* and *Electrical Workers Local 697* and their make-whole entitlements were "easily identified."

Here, by contrast, determining the identity of the travelers who declined referrals, the dates on which they did so, and the traveler's motive in each instance would be significantly more difficult. While *Sachs* and *Electrical Workers Local 697* both involved documented work terminations, this case involves virtually undocumented choices by individuals to "go on the side list" that was kept for travelers at the times when work referrals became available. In this case, moreover, there is no evidence indicating which or even how many travelers acquired knowledge of the Union's coercive conduct; nor has the General Counsel proved that the Respondent's coercive conduct caused any traveler other than the named discriminatees to decline a referral. There is, in fact, strong evidence that travelers had previously declined referrals voluntarily, i.e., for reasons unrelated to unlawful coercion. It appears that there is no documentary evidence, however, to establish in the compliance proceeding any of the elements required for make-whole relief here, and the only evidence would be the travelers' own self-interested testimony.[8] Determining whether or when a traveler quit because of the Respondent's misconduct would therefore pose difficult credibility issues.[9]

The cases cited by our dissenting colleague in support of his argument that the Board has granted a make-whole remedy to additional unidentified discriminatees even where there were potentially many such persons and there was no simple way to identify all of them, are similarly distinguishable. In both *Electrical Workers Local 6 (San Francisco Electrical Contractors),* 318 NLRB 109 (1995), enfd. mem. 139 F.3d 906 (9th Cir. 1998), and in *Plumbers Local 198 (Jacobs/Wiese)*, 268 NLRB 1312 (1984), enfd. 747 F.2d 326 (5th Cir. 1984), the widespread discrimination that was established did not involve the undocumented observance of a stand-aside custom, but discriminatees' initial eligibility for the union's written, first-priority referral list and the union's deliberate failure to inform all discriminatees of the ap-

[5] 248 NLRB 669 (1980), enfd. in part sub nom. *NLRB v. Electrical Workers Local 453*, 668 F.2d 991 (8th Cir. 1982).

[6] 318 NLRB 443 (1995).

[7] In *Sachs Electric Co.,* 32 travelers worked for the employer; some of these travelers quit as a result of the union's coercive conduct and the remainder were lawfully laid off by the employer. The Board provided a make-whole remedy for the travelers (including two identified travelers) who quit, deferring to compliance the determination of which travelers quit and which were laid off. In *Electrical Workers Local 697 (UE & C Catalytic)*, all of the travelers who worked for the employer were shown to have quit as a result of the union's coercive conduct, and the Board provided a make-whole remedy for them all.

[8] The dissent notes that the Respondent's hiring hall records show the dates that the dispatcher called a traveler's name for referral and whether the traveler accepted a referral. However, the evidence strongly suggests that those records would not show *why* a traveler did not accept a particular referral—e.g., the traveler might not have been present in the hiring hall when his name was called, or he might have been going on the customary "side list" voluntarily.

[9] In *Electrical Workers Local 697 (UE & C Catalytic),* the judge noted testimony that there was an "unwritten rule" or "tradition" that travelers would quit in favor of local union members. 318 NLRB at 444. The judge also noted—and explicitly discredited—the testimony of two travelers that they quit voluntarily. 318 NLRB at 447. However, there is no indication that any of the travelers involved in that case had themselves previously quit a job in favor of local union members.

plicable rules and other information. In both cases, therefore, the union's broad discrimination against unidentified travelers and nonmembers was established, and there was sufficient documentary evidence to determine make-whole entitlements. In *Teamsters Local 328 (Blount Bros.),* 274 NLRB 1053, 1060 (1985), reconsideration denied 283 NLRB 779 (1987), which involved actual referrals, not only was widespread discrimination in favor of senior members established, but it was specifically confirmed that discriminatees had applied for work in writing and that that evidence was in the Respondent's possession. Although the determination of entitlement to a make-whole remedy in these cases might have been difficult in the sense of requiring an intensive review of hiring hall records, that determination did not depend, as it would here, primarily on determining a putative discriminatee's state of mind by assessment of the credibility of self-interested witnesses.

Our colleague suggests we are holding that a make-whole remedy may properly be ordered for unnamed discriminatees only where such individuals may be identified through documentary evidence. We are not so holding. Although documentary evidence is certainly preferable, we do not foreclose the possibility, in some future case, of extending relief to unnamed persons to be identified by testimony concerning straightforward matters of objective fact. Such testimony would at least be capable of corroboration by other witnesses. Here, by contrast, the testimony necessary to identify unnamed class members would concern a wholly subjective state of mind. We decline to find such a class "defined and easily identified."

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Electrical Workers, Local 357, AFL–CIO, Las Vegas, Nevada, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining at its hiring hall a side-list practice and procedure in a manner whereby travelers are coerced to surrender employment referral opportunities to permit dispatch of Local 357 members and coercively applying said side-list practice to Michael J. Cieklinski, Richard Brian Henderson, Allan Nairn, and other travelers.

(b) Threatening travelers with denial of membership in Local 357 and loss of job opportunities because they refuse to surrender job referrals to local members.

(c) Restraining and coercing travelers into surrendering job referrals to members of Local 357 by participating in, acquiescing in, or failing to take any action against members of Local 357 who threaten bodily harm and disparage travelers who accept job referrals.

(d) Failing and refusing to provide access to and a right to inspect and copy hiring hall books and records, including any side lists, which are necessary to determine the requesting individual's position or priority of dispatch within the referral system and to further determine whether the referral process is being operated properly.

(e) Requesting Newtron Heat Trace, Inc. or any other employer to refuse to hire travelers or any other hiring hall applicant in violation of Section 8(a)(3) of the Act.

(f) Causing or attempting to cause Newtron Heat Trace, Inc. or any other employer to refuse to hire or to lay off or otherwise terminate travelers or any other hiring hall applicant in violation of Section 8(a)(3) of the Act.

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

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

(a) Maintain and enforce its established hiring hall practices and procedures in a manner that does not coerce travelers to surrender employment referral opportunities to permit dispatch of Local 357 members.

(b) Make Michael J. Cieklinski, Richard Brian Henderson, and Allan Nairn whole, plus interest, for any loss of earnings and other benefits suffered by them as a result of the Respondent's unlawful conduct, in the manner set forth in the remedy section of the judge's decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records in the possession of the Respondent including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its hiring hall in Las Vegas, Nevada, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 28, 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 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.

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

(e) 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.

CHAIRMAN BATTISTA, dissenting in part.

For the reasons set forth below, I disagree with my colleagues' conclusion that the unidentified travelers who lost job opportunities as a result of the Respondent's coercive conduct are not a "defined and easily identifiable class," entitled to remedial relief. In a long line of cases, the Board has provided broad make-whole remedies to remedy myriad violations against travelers.[1] This case is yet another example of unlawful discrimination against this class of employees. And this class is readily "defined and easily identifiable": travelers who declined referrals because of the Respondent's unlawful coercion of travelers who were attempting to secure jobs through its referral system. Given the importance that the Board places on removing the effects of an adjudged unfair labor practice, the Board provides a make-whole remedy for unidentified persons adversely affected by this conduct, rather than allowing wrongdoers to avoid the consequences of their actions.

My colleagues have themselves set forth the well-defined category of employees who would fall within the ambit of a remedy. The General Counsel, who would bear the burden of proof, can easily identify those employees in a compliance proceeding. That is, the General Counsel would call witnesses who would testify that: (1) they knew of the Union's conduct; (2) they declined referrals after learning of such conduct; and (3) they declined because of that conduct.

These matters are straightforward. As to the first, the employees would testify, on direct and cross-examination, as to when, where, and from whom such knowledge was acquired. As to the second, the employees would testify as to the declination. The Respondent could challenge that testimony with contrary evidence, including testimony by the Respondent officials who operated the hiring hall as well as hiring hall records showing the dates that the dispatcher called a traveler's name for referral and whether the traveler accepted a referral.

My colleagues say that the Respondent's hiring hall records may not contain sufficient information to ascertain whether the traveler was present in the hall when his name was called. Assuming arguendo that the hiring hall records do not in fact resolve this issue, other evidence (e.g., testimony) can do so. In short, the problem is not an insuperable one.

My colleagues complain that there is no evidence that other employees declined referrals because of the Respondent Union's coercive conduct. The difference between my colleagues and myself is that I would hear such evidence, and my colleagues would foreclose it.

My colleagues also suggest that the proof can only be documentary. That is, mere testimony would involve credibility resolutions and will not suffice. Again, there is no case precedent cited for such a rule, and I believe there is none. Administrative law judges make credibility determinations all the time. There is no reason why that cannot be done here.[2]

Concededly, the third matter involves the employee's motive for declining. However, the Board's judges frequently make "motive" findings concerning actions. Indeed, those findings are rarely reversed.

My position is consistent with Board precedent. In *Sachs Electric Co*.,[3] and in *Electrical Workers Local 697 (UE & C Catalytic)*,[4] a union committed unfair labor practices that were analogous to the Respondent's unlawful conduct here and the Board provided a make-whole remedy for all the adversely-affected travelers, not merely those who were identified in the original proceeding. In these cases, travelers were working while local union members were unemployed. The union made unlawful coercive statements to travelers that caused the travelers to quit their jobs in favor of local union members. The Board provided a make-whole remedy for all the travelers who quit their jobs in favor of local union members, not for just the travelers who were identified in the original proceeding.

In light of that precedent, the Board here should provide a make-whole remedy for travelers who declined referrals because of the Respondent's coercive conduct. The remedy should not be limited to the three travelers

[1] Interestingly, the cases involve sister locals of the Respondent. See, e.g., *Electrical Workers Local 697 (UE & C Catalytic),* 318 NLRB 443 (1995); *Electrical Workers Local 6 (San Francisco Electrical Contractors),* 318 NLRB 109 (1995), enfd. mem. 139 F.3d 906 (9th Cir. 1998); *Fischbach/Lord Electric Co.,* 270 NLRB 856 (1984), enfd. in part sub nom. *NLRB v. Electrical Workers Local 112*, 827 F.2d 530 (9th Cir. 1987); *Electrical Workers Local 175 (Duncan Electric),* 269 NLRB 691 (1984), enfd. 760 F.2d 714 (6th Cir. 1985); *Electrical Workers Local 441 (Bear State Electric),* 269 NLRB 664 (1984); *Sachs Electric Co*., 248 NLRB 669 (1980), enfd. in part sub nom. *NLRB v. Electrical Workers Local 453,* 668 F.2d 991 (8th Cir. 1982).

[2] My colleagues say that, "in a future case," testimony might be permitted. There is no reason why that would not be true here. And, testimony concerning motive is not "wholly subjective." As in any other case involving motive (e.g., 8(a)(3) cases), testimony concerning motive is usually accompanied by objective facts.

[3] 248 NLRB, supra at 670–671.

[4] 318 NLRB, supra at 447.

who were identified in the original proceeding as the immediate focus of the coercive conduct.

Furthermore, the Board has provided a make-whole remedy for unidentified adversely affected persons in cases even where there were potentially many such persons. See *Electrical Workers Local 6 (San Francisco Electrical Contractors),* supra at 142–143 (union unlawfully denied travelers book I eligibility by enforcing discriminatory rules and by failing to notify travelers of hiring hall rules over multiyear period); *Teamsters Local 328 (Blount Bros.),* 274 NLRB 1053, 1060 (1985), reconsideration denied 283 NLRB 779 (1987) (union, in selecting from among over 100 hiring hall registrants to fill 25 jobs, failed to follow objective referral criteria resulting in unlawful referral preferences for senior members personally known to union officials); *Plumbers Local 198 (Jacobs/Wiese),* 268 NLRB 1312 (1984), enfd. 747 F.2d 326 (5th Cir. 1984) (union used separate out-of-work registers and more onerous sign-in requirements to unlawfully discriminate against 100 travelers in referrals).

Accordingly, I would affirm the judge's recommended Order providing a make-whole remedy for all travelers who lost job opportunities as a result of the Respondent's coercive conduct and deferring to compliance proceedings issues related to which, if any, travelers are entitled to be made whole.

APPENDIX

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

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

FEDERAL LAW PROVIDES

> Any labor organization that operates a hiring hall or referral process that is an exclusive source of employment referrals to employers must fairly and consistently follow the hiring hall's rules and regulations regarding hiring hall dispatches and must represent all individuals seeking to utilize that hall in a fair and impartial manner.

WE WILL NOT maintain at our hiring hall a side-list practice and procedure in a manner whereby individuals who are not members of Local 357 (travelers) are coerced to surrender employment referral opportunities to permit dispatch of Local 357 members.

WE WILL NOT threaten travelers with denial of membership in Local 357 and loss of job opportunities because they refuse to surrender job referrals to Local 357 members.

WE WILL NOT restrain and coerce travelers into giving up job referrals to members of Local 357 by participating in, acquiescing in, or failing to take any action against members of Local 357 and others who threaten and harass travelers who accept job referrals.

WE WILL NOT upon request of a represented employee or job applicant, fail and refuse to provide access to and a right to inspect our books and records, including any side lists, which are necessary to determine the requesting individual's position or priority of dispatch within the referral system and to further determine whether the referral process is being operated properly.

WE WILL NOT request any employer to refuse to hire travelers or any other job applicant in violation of Section 8(a)(3) of the Act.

WE WILL NOT cause or attempt to cause any employer to refuse to hire or to layoff or otherwise terminate travelers or any other job applicant in violation of Section 8(a)(3) of the Act.

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

WE WILL maintain and enforce our hiring hall practices and procedures in a manner that does not coerce travelers or other job applicants to give up employment referral opportunities to permit dispatch of Local 357 members.

WE WILL make Michael J. Cieklinski, Richard Brian Henderson, and Allan Nairn whole, plus interest, for any loss of earnings and other benefits suffered by them as a result of our unlawful actions.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 357, AFL–CIO

Joel C. Schochet, Atty., for the General Counsel.
Dennis A. Kist, Atty. (Dennis A. Kist & Associates), for the Respondent.

DECISION

I. STATEMENT OF THE CASE

LANA H. PARKE, Administrative Law Judge. This matter was tried in Las Vegas, Nevada, on March 9 and 10, 2004, upon an order further consolidating cases, second consolidated complaint and notice of hearing (the complaint) issued November 26, 2003[1] by the Regional Director of Region 28 of the National Labor Relations Board (the Board) based upon charges filed respectively by Michael J. Cieklinski and Richard Brian Henderson (Cieklinski and Henderson), individuals. The complaint

[1] All dates herein are 2003 unless otherwise specified.

originally named Newtron Heat Trace, Inc. (Newtron) as a Respondent. At the hearing, counsel for the General Counsel represented that Newtron had entered into a settlement agreement resolving the charges against it. I granted counsel for the General Counsel's motion to sever Newtron from the complaint. The complaint, as amended at the hearing, alleges International Brotherhood of Electrical Workers, Local 357, AFL–CIO (Respondent or Local 357) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). Respondent essentially denied all allegations of unlawful conduct.

II. ISSUES

1. Did Respondent maintain a practice and procedure whereby hiring hall applicants who were members of other local unions of the International Brotherhood of Electrical Workers, AFL–CIO (travelers), surrendered dispatch referrals to Local 357 members and obtained dispatch only after all Local 357 members had been afforded an opportunity for dispatch to work?

2. During relevant times, did Respondent apply the above practice to Charging Parties Michael J. Cieklinski and Richard Brian Henderson, and to other travelers, including Al Nairn and others similarly situated?

3. Did Respondent restrain and coerce travelers into surrendering dispatch referrals to Respondent's members by participating in, acquiescing in, or failing to take any action against, members of Respondent who threatened bodily harm and disparaged travelers who were being issued dispatch referrals?

4. Did Respondent threaten travelers with denial of local membership and resulting loss of job opportunities because they refused to surrender dispatch referrals to local members?

5. Did Respondent fail and refuse to provide copies of an alternate job referral list (side list) to a traveler who requested them?

6. Did Respondent cause or attempt to cause Newtron to refuse to hire and/or to discharge Henderson for reasons other than his failure to tender uniformly required fees and periodic dues?

7. Did Respondent cause or attempt to cause Newtron to refuse to hire Cieklinski for reasons other than his failure to tender uniformly required fees and periodic dues?

III. JURISDICTION

Newtron, a Louisiana corporation, with a place of business located at Primm, Nevada, has been engaged as a heat trace contractor in the construction industry doing commercial and industrial construction. During a 12-month period ending October 31, Newtron, in conducting its business operations described above, annually purchased and received at its place of business in Primm, Nevada, goods and services valued in excess of $50,000 directly from points outside the State of Nevada. In its answer to the complaint, Newtron admitted, and I find, it has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.[2]

IV. THE FACTS

At all times relevant hereto, Respondent has been signatory to collective-bargaining agreements with Newtron and other contractors performing construction industry work in and around Clark County, Nevada, which provide, inter alia, for the recognition of Respondent as the exclusive collective-bargaining representative of the employees of Respondent in the classifications of general foreman, journeyman wireman, journeyman technician and journeyman cable splicer, among other classifications, with respect to rates of pay, wages, hours of employment, processing of grievances, and other terms and conditions of employment. Respondent has maintained with Newtron and other area contractors agreements requiring that Respondent be the exclusive source of referrals of employees for employment with Newtron and other area contractors engaged in the construction industry. To that end, Respondent maintains a construction dispatch/referral system from its hiring hall and office facility located in Las Vegas. During 2003, pursuant to its contractual dispatch/referral system, Respondent has dispatched electrical construction workers to Newtron at its Big Horn construction jobsite located in Primm, Nevada.

Simply described, Respondent's dispatch/referral system operates as follows: The inside construction agreement (inside agreement) provides that out-of-work International Brotherhood of Electrical Workers Union (IBEW) members desiring employment may sign up in one of four "books,"[3] depending on their meeting applicable criteria. Those who sign in book one are the first to be offered dispatch to available jobs. The eligibility criteria for book one is as follows:

> All applicants for employment who have four (4) or more years' experience in the trade, are residents[4] of the geographical area, constituting the normal construction labor market,[5] have passed a journeyman's examination given by a duly constituted Inside Construction Local Union of the IBEW or have been certified as a journeyman wireman by any Inside Joint Apprenticeship and Training Committee and who have been employed in the trade for a period of at least one (1) year in the last four (4) years in the geographical area covered by the collective bargaining agreement.

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[2] Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

[3] The inside agreement in which the criteria for book eligibility is set out, identifies the eligibility gradations as group I, II, III, and IV. As the witnesses referred to the eligibility categories as "books," I have used that term herein.

[4] The definition of resident is set out in sec. 3.09 of the inside agreement: a person who has maintained his permanent home in the above-defined geographical area for a period of not less than 1 year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

[5] The geographic area is specified in sec. 3.08 of the inside agreement: Clark and Lincoln Counties and that portion of Nye County south of the Mt. Diablo Base Line, State of Nevada.

When signatory construction companies need employees in classifications encompassed by the agreement, they notify the hiring hall, which in turn announces or offers the available jobs to those signed in on book one in order of position on the out-of-work list. Membership in Respondent is not required; members of other IBEW locals throughout the United States who are not members of Respondent, i.e., travelers, may, upon proof of good standing, sign up for job referral in the book for which they are eligible, including book one.[6] When a worker's name is called from the book one out-of-work list, the worker may choose from among the jobs still available for dispatch.

For many years, it has been the custom at Respondent's hiring hall for travelers with book one eligibility to ask that their names be put on an informal "side list" for deferred dispatch after Respondent has afforded dispatch opportunity to all Local 357 book one signers (the side-list practice). According to Union Agents Jeff Westover and Terry Large, this was an accepted "courtesy" to Local 357 members, knowledge of which was disseminated by word of mouth. Compliance with the custom entailed no particular hardship to travelers when ample work existed.

By stipulation of the parties, the following possessed the designated titles and acted as agents of Respondent within the meaning of the Act during periods relevant to this case:

David R. Jones (Jones)	Business Manager
Jeff Westover (Westover)	Assistant Business Manager
Terry Large (Large)	Dispatcher
Lonnie Bennington (Bennington)	Dispatcher
Bill Poma (Poma)	Agent

Respondent denied the agency status of Brian Egge (Egge), steward, and Edward Gering (Gering), a Local 357 member, sometime organizer, and chairman of the Union's executive committee. During the relevant period, Egge served as Respondent's steward for Newtron's IBEW employees at the Big Horn jobsite. While in that position, Egge discussed employee complaints, safety issues, and pay issues with the jobsite supervisor, had authority to write grievances and to resolve them, and served as liaison between Respondent and the jobsite. Egge checked dues receipts of workers reporting to the jobsite to see if they were current and if not, told them to pay. Gering held the position of union organizer with Respondent from August 2001 until July 28, 2003, resuming the position in February 2004. During 2003, Gering was the chairperson of Respondent's unit one (inside journeyman wiring) executive committee, which met monthly to, inter alia, review local union membership applications and report to the executive board if applicants met the criteria. At all relevant times, Charging Party Henderson, was a member of IBEW Local 342 in Winston Salem, North Carolina (Henderson's home local). He was not a member of Respondent. In recent years, Henderson has been a resident of Las Vegas and has received dispatches from Local 357 as a traveler.[7] At all relevant times, Charging Party Cieklinski, was a member of IBEW Local 1426 in Grand Forks, North Dakota (Cieklinski's home local). Although not a member of Respondent, since 1982 Cieklinski has been a resident of Las Vegas and has received dispatches from Local 357 as a traveler.

Prior to 2003, Henderson and Cieklinski had complied with Local 357's custom regarding travelers declining dispatches from book one when local members had not yet been dispatched, by going to the dispatch window when their names were called and asking to be put "on the side." The dispatcher then listed their names on a piece of scratch paper to the side of book one, which list the dispatcher referred from when all eligible local members who wanted jobs had accepted dispatch.

Beginning in January, Cieklinski noticed a larger number than before of Local 357 members signing book one, which he attributed to successful union organization drives swelling Respondent's membership numbers. With increased numbers of local membership on book one, Cieklinski regularly had to turn down dispatches in order to comply with the local's side-list custom.

On March 7, Cieklinski telephoned IBEW Ninth District Representative Dave Tilmont (Tilmont) about the side-list situation at Local 357. Tilmont suggested he write to Michael S. Mowrey (Mowrey), vice president of IBEW District 9. Prior to dispatch on that same day, Cieklinski spoke to Westover about the problem, telling him he would have to take a job that day without going on the side list in order to feed his family. Westover told him he was entitled to the call if he so chose, but there were ramifications. Westover warned, "Those members that don't choose to step aside as a courtesy usually won't get membership [in Local 357]." He wished Cieklinski luck. Later that day, when Dispatcher Large called his name, Cieklinski accepted a job with Bechtel Construction Company. Large asked, "Are you sure you want to do this?"[8]

Cieklinski said he did, and Westover told Large to give him the call. Large asked again if Cieklinski were sure he wanted to accept the call, saying, "You're only going to work 41 hours."[9] Mr. Cieklinski had just moved one to two steps beyond the dispatch window when a man identifying himself as a Local 357 member whose name was below his on the out-of-work list accosted him, called him a f__ tramp, and said, "You are taking my job." Cieklinski told him he had a right to take the call. Other persons in the room yelled to him, "Do you want to get

[6] At the time of the hearing travelers made up approximately 18 percent of book one signers.

[7] Henderson unsuccessfully sought membership in Local 357; there is no allegation related to denial of membership.

[8] Large denied asking Cieklinski if he were sure he wanted to take the call. He admitted Cieklinski's acceptance of the call was a "highly" unusual circumstance. I did not find Large to be a reliable witness, and I do not credit his testimony where it conflicts with that of Cieklinski and Henderson.

[9] An individual may maintain his/her position on the out-of-work list if the job lasts less than 40 hours. If more than 40 hours are worked, the individual's name goes to the bottom of the list. Cieklinski did not know how Large knew the Bechtel job would last only 41 hours as it had not been announced as a short-call job (a job lasting less than 40 hours.) Cieklinski believed Large was threatening he would make sure the job lasted only 41 hours.

your ass kicked?" "Turn the call back in," and "Do the right thing." Cieklinski returned to the window and gave the job call back to Large and Westover. Neither commented on his change of heart.

Following the events of March 7, Cieklinski by letter dated March 10, complained to Mowrey about Local 357's "book one-on the side practice," which severely limited job opportunities for travelers. He related the occurrences of March 7, pointing out that he had already told Tilmont about the situation and that he had been unemployed since January 8 because of the practice. He asked for intervention:

> All I am asking is that Local # 357 uphold the integrity of the union and stop condoning the practice of men having to go "on the side." Back in the old days job calls were distributed fairly and everyone had the same opportunity for job call offers. Book one was book one. Mr. Mowrey, I am asking that you please look into this problem at your earliest convenience.

By letter dated March 17, Mowrey responded that the referral procedure was created by the agreement between the Local Union and the Employer:

> It is important to note . . . that it is the Local Union and not the International that serves as your exclusive bargaining representative. . . . For these reasons there is no formal procedure under which I can entertain your complaint against the Local Union. Nevertheless, in order to attempt to assist you in an informal way, I am assigning International Representative Tilmont to inquire further about the matters you have raised in your letter. In the meantime, I would suggest that you pursue whatever additional steps may be available to you, possibly a request to be heard by the "Referral Appeals Committee."

In response to Mowrey's assignment, Tilmont apparently made some effort to resolve the situation, although he could not recall "anything specific." According to Cieklinski, he reported to Cieklinski that he had tried to set up a meeting between Jones, Respondent's business manager, and Cieklinski, but Jones refused. Although Tilmont denied Jones had refused to meet, he admitted talking to Jones about Cieklinski's complaint.[10]

By letter dated March 25, Cieklinski asked for a hearing by the appeals committee regarding the integrity of the referral procedure. By letter of March 31, Mickey Miles (Miles), Respondent's president, informed Cieklinski he had to submit a formal complaint and proposed remedy to the committee. By letter dated April 8, Cieklinski did so, outlining all that had occurred on March 7 when he accepted a dispatch, including threats and intimidation directed toward him by Local 357 members. Miles set an appeals committee hearing for April 28.

On April 28, Cieklinski attended the scheduled hearing of the appeals committee. Henderson and Nairn were also present. Miles, a contractor's associate, and the head of the joint apprentice-training center formed the hearing committee.[11] The committee told Cieklinski, Henderson, and Nairn that when their names were called in the hiring hall, they should just take the call. At some point following the hearing, the appeals committee issued an undated decision, which stated the committee found no violation of the inside agreement. During this period, rumors circulated in the hiring hall that travelers were accepting jobs without going on the side, and Local 357 members raised the issue in union meetings "all the time," according to Gering. Local 357 members contacted Gering because they knew he had held a position with Respondent and talked to him about travelers taking dispatches.

During the relevant period herein, Ken Allen and Kevin Bellard (Allen and Bellard) supervisor and general foreman, respectively, of Newtron were responsible for hiring and firing employees at Newtron's Big Horn Powerhouse jobsite (Big Horn job). In mid-May, Newtron placed a request with Respondent's hiring hall for one electrical worker. The dispatch for that job was to be made on May 16.

Having been out of work for about 8 months, in mid-May Henderson decided to accept a dispatch even though it meant "jumping the book." (A book jumper is a nonmember of Local 357 who, having legitimately attained eligibility for and signed up in book one, accepts a job referral while Local 357 signers farther down on the list remain undispatched.) Henderson was, at that time, at the top of the book one out-of-work list. Having learned by calling the job line that a dispatch to Newtron, a desirable job, would be offered in the hiring hall on May 16, Henderson reported to the hiring hall on that date. When the dispatcher, Large, called his name, Henderson went to the window and said he wanted to go to Newtron. Large asked if that was what he wanted, and Henderson said yes. As he waited for his referral paperwork, Henderson audiotaped conversations between him and Local 357 members. Counsel for the General Counsel caused a transcript of the tapes to be prepared for which Henderson later identified speakers. While the tapes were played in court, the parties compared the audio to the transcript. Although some of the interaction on the tapes is not audible because of loud background and covering noise, much of it, particularly those conversations herein referenced, occurs in relative quiet.[12] The taped conversations, in pertinent part, are set forth below:

Date and Place of Conversations

Dispatch Room of the Hiring Hall

[10] I credit Cieklinski's account of what Tilmont told him. I found Cieklinski to be a believable witness. I found Tilmont to be less open and even somewhat constrained in giving testimony.

[11] Cieklinski did not recount what he said in the hearing. Miles was vague about what Cieklinski said, testifying that although Cieklinski referred to a March 7 incident, he "didn't get the feeling" that Cieklinski had said he felt threatened by a Local 357 member. It is inherently incongruous that Cieklinski would not have repeated at least the information he provided in his appeals request of April 8. Moreover, the committee must have read his appeal and must have known what Cieklinski asserted he had experienced. I find Miles testimony equivocal at best, and I do not rely on it.

[12] Although objecting at the hearing to introduction of the tapes, Respondent states in its posthearing brief, "In that Henderson produced a tape recording of comments made to him on May 16, 2003 after taking the dispatch, what was said to him cannot be credibly debated."

May 16

Speakers

Mr. Henderson
Vick Snow (Mr. Snow), Local 357 member
Richard Avena (Mr. Avena), Local 357 member
Allan Nairn (Mr. Nairn), Traveler
Ms. Bennington, dispatcher
Numerous unidentified voices

Conversations

Mr. Snow: Are you on the side?

Mr. Henderson: Yeah

Mr. Snow: Well, you just stepped up there . . . on all your brothers and took a job?

Mr. Henderson: Yeah.

Mr. Snow: That's f___ up . . . How would you feel if I went to your local and did the same thing? . . . Now the proper thing to do is to step back to the window and give that call back to a brother that needs a job . . . You're f___ up . . . Where you out of?

Mr. Henderson: 342.

. . . .

Mr. Henderson: What page you on?

Mr. Snow: I just signed the books today.

Mr. Henderson: So? I been on the books for eight months. I been in there since '96.

Mr. Snow: You're on the side.

Mr. Henderson: I been in this town since '96.

. . . .

Mr. Snow: It's f___ up when you jump in front the brothers and take another f___ call . . . And I'll make sure that every man in that hall knows—knows that you did it too. The proper thing to do is go back to the window and say, "Here, I'm not taking this call."

[Pause of approximately 4 minutes with noise/voices]

Unidentified male: Dude, you screwed me out of a call.

. . . .

Unidentified male: He took a call.

Unidentified male: You're sh___ me.

Mr. Snow: Like I said, brother, proper thing to do is go get your ticket back and give back the call to somebody else . . . You won't lose your place on the books or anything else. That's the proper thing to do . . . You don't like [the way] this local works, then you go back home.

[Other unidentified persons loudly questioned and jibed at Henderson for accepting a dispatch. Snow continued to urge Henderson to give up his dispatch as Henderson inquired at the window when his referral would be out.]

Mr. Snow: You want to save face? You know, if your name gets out on the street for doing that sh__, it's going to hurt you. If you walk up there right now, everything will be forgiven . . . I mean if you want to continue to work here, you know.

[Voices talking at the same time.]

Unidentified male: Hey, you got a home here and everything, man. If you want to live here, you got to do the right thing.

. . . .

Mr. Snow: I asked him to step outside. He wanted—he wanted to open it up right here in the middle of the floor, so I did.

Unidentified male: Yeah, I want to set him on fire, you know.

Mr. Snow: I told him we'd do it in private, but, no, he wanted everybody to hear, so now everybody's gonna know.

[Mr. Henderson inquires again about his referral.]

Mr. Henderson: They aren't gonna give me my referral or what? . . . Won't give me my referral. That's—I took the first—I took the first job.

Mr. Nairn: Everybody else has got their referrals already.

. . . .

Ms. Bennington: You can always go to dispatch. I don't have yours right now.

[As Henderson moved between the dispatch and the referral window, an unidentified man blocked his way.]

Mr. Henderson: . . . that was cute.

Unidentified male: No, that was cute, that stunt you pulled right then and . . . this thing you jumping the books, that was cute.

. . . .

Mr. Henderson: I been on the books for eight months . . . the constitution says I got as much right to work as you.

Unidentified male: Does your ticket say 357?

Unidentified male: That must be the way they do it in his own home local. Is that the way they do it in your local?

[Mr. Henderson leaned against the wall next to the referral window where Bennington stood looking at him.]

Unidentified male: My constitution says soon as you get out that door I could whip your ass.

. . . .

Unidentified male: Well, my constitution says, as soon as you get out there, whuppin' your ass. That's what the constitution says.

Mr. Avera: That's f__ up. Don't know how it works. Don't care how it works. That's the way it works in his local . . . When you don't work in your own home local, then you got to go somewhere else, that's all. You don't go into somebody else's local, start jumping the books.

Mr. Snow: 500 brothers out of work . . . I'm glad I met you, Brian . . . I'll remember that name.

Mr. Avera: Everybody will remember that name.

Unidentified male: Yeah, don't speak to No. 41. You're gonna catch hell.

. . . .

Unidentified voice: Gonna give you a hard time.

. . . .

Unidentified male: . . . you're gonna get a lot of headaches out of it.

Unidentified male: He'll get paid—he'll get paid now but—get paid later.

Large noticed a "commotion was going on" concerning Henderson, but he said he had a job to do, which he would not interrupt. Large testified it was common for people to get into arguments about various subjects in the hiring hall but gave no details of any arguments. Juanita Kerrick, a traveler working out of Local 357's hiring hall since 1995, who was called as a witness by Respondent, testified she could not recall ever seeing an argument among workers awaiting calls in the hiring hall. Her testimony does not contradict that of Cieklinski or Henderson, as there is no evidence she was present at the hiring hall on March 7, May 16 and 23, or September 15. Her testimony does, however, provide evidence that arguments or "commotions" at the hiring hall were unusual, which contradicts Large's assertion that arguments were routine. I do not, therefore, accept his testimony in this regard.

Shortly thereafter, Egge told Bellard that a "book jumper" would be reporting to the jobsite. Egge asked Bellard if he could "spin" the book jumper (deny the referred worker employment when the worker reported to the jobsite). Bellard said he would have to speak to Newtron's general manager. Egge said if the company did not do it, there could be problems at the jobsite. When Bellard asked what he meant, Egge said, "Well, you know, wires being cut or people not showing up for work, or concrete being poured down pipes. It might not be from us; there's other union contractors out here on this job, you know. I'm not saying it's going to be us." Bellard said he would speak to his boss.[13]

Bellard reported his conversation with Egge to Lee Byrd (Byrd), Newtron's general manager. Byrd told Bellard to contact the hiring hall and get their input; he wanted to know whether Respondent would back up Newtron if they spun the worker, or would Respondent later file a grievance for him. Bellard telephoned Westover, told him Egge had said a book jumper was being dispatched to the job, and asked Westover what he wanted to do about it.

Mr. Westover said the company should do the right thing, that he wasn't happy with book jumpers. Westover told Bellard if he did the right thing, "there could be a ticket down the road for you." Bellard understood this reference to a ticket to mean that he might be permitted to switch his union membership from his home local in Louisiana to Local 357, which Westover knew he wanted to do.[14]

Bellard asked if Respondent would represent workers the company spun. Westover said he could not guarantee Respondent would not give them representation. Bellard said, "If you can't guarantee that, then I can't guarantee that I can go along with what you want me to do."[15]

When, pursuant to Newtron's requested dispatch Henderson reported to the Big Horn jobsite, Bellard hired him. Within the first week of his hire, Egge asked to speak with Bellard. He said he did not like having Henderson on the job, that nobody else liked having a book jumper on the payroll. Later, Bellard complained to Egge that the work was slowing down and asked him what the problem was. Egge told Bellard that if Newtron got rid of the "traveler," more work would get done faster.[16] On another occasion, Bellard sought to assign overtime work on the jobsite. Egge refused to work overtime and told Bellard he would discourage other Local 357 members on the jobsite from working overtime if Newtron let Henderson do any overtime. Out of concern that it would impede work on the jobsite, Bellard never assigned overtime work to Henderson.

Shortly before May 23, Newtron placed another request for an electrical worker with Respondent. Cieklinski went to the hiring hall on May 23, intending to accept dispatch to Newtron.[17] Henderson and Nairn also returned to the hiring hall to witness Cieklinski accept the dispatch. When his name was called for dispatch on May 23, Cieklinski did not ask to go on the side, but asked to be dispatched to Newtron. He was directed to report to the jobsite on May 27.

When Cieklinski stepped away from the dispatch window toward the main reception office to get his referral, four or five persons in the room yelled and screamed at him. As he continued walking toward the referral area in main reception office, other persons verbally attacked Henderson and Nairn. Large and another dispatcher watched from the dispatch window. The persons followed Cieklinski into the referral area where Poma and Bennington stood watching.

After witnessing Cieklinski accept a dispatch that morning, while standing about 6 to 10 feet from the dispatch window, Henderson taped interchanges between him and Local 357 members under the same circumstances described earlier. While members and/or other persons directed loud and confrontational comments to Henderson, Large, and Westover intermittently looked at Henderson from the dispatch window as they walked back and forth in the dispatch office. The exchanges, in pertinent part, are set forth below:

Date and Place of Conversations

Dispatch Room of the Hiring Hall

[13] Egge denied having any such conversation with Bellard. I credit the testimony of Bellard, whom I found to be forthright and sincere. Egge admitted the Local 357 workers on the Big Horn job did not like Henderson's accepting the job.

[14] While Bellard was unclear about when the conversations occurred, he remembered it was about a week prior to the day Henderson reported to the jobsite in response to the dispatch request. As Henderson was hired on May 18, the conversations must have occurred in mid-May.

[15] Westover denied having any such conversation with Bellard. I specifically discredit Westover's denial and accept Bellard's account.

[16] Bellard testified that several conversations occurred between him and Egge on this subject. He was not clear in assigning specific comments to specific conversations, and I do not find it necessary to do so in order to find the testimony reliable.

[17] Cieklinski was willing to accept a call to construction companies Newtron, Bechtal, or Fisk because he believed those companies would not bow to Respondent pressure and spin him.

May 23

Speakers

Mr. Henderson
Ben Grant (Mr. Grant), Local 357 member
Jennifer Zambrano (Ms. Zambrano), Local 357 member
Richard Avena (Mr. Avena), Local 357 member
Ron Kimble (Mr. Kimble, Local 357 member
"First Stop," Local 357 member
"Bear," Local 357 member
Numerous unidentified voices

Conversations

Mr. Grant (to Mr. Henderson): You're a piece of sh__.

. . . .

Bear: That goes for me too, okay? . . . You're a big pile of sh__, that's what you are.

. . . .

Ms. Zambrano: So it doesn't matter, you just screw your brothers and sisters out of jobs? . . . You want to see my kids over here? Ask them how long I've been out of work. Hey, guys, come here. Kids. Come on, look at my kids . . . They're here with me because I'm unemployed. And ask them how long I've been out of work.

Mr. Henderson: How long you been out of work?

Ms. Zambrano: Ask them. Look at them. Look at these guys. These are the guys I try to feed each and every week.

. . . .

Mr. Henderson: . . . I live here. I got an out-of-state ticket . . . I got a house here. I live here.

Bear: . . . Do you have a ticket that says 357 on it?

Mr. Henderson: No, it didn't say 357.

. . . .

[Henderson returned to the referral window. Barrington was there, Poma was moving about in the referral office.]

First Stop: Boy, if you want to play the game out here, you better start getting used to doing it right. Now, g__ d__it, that's b__ sh__.

. . . .

First Stop: You can go back to your home local and work.

Mr. Henderson: I live here, dude.

. . . .

First Stop: Well, good for you. I been here since '95, and I got in the local because I knew that's what you're supposed to do . . . the way you've done it, you're f___.

. . . .

First Stop: Well, why in the hell did you come here in '96? You wasn't invited, was you? Well then, why don't you go home on your own?

Mr. Henderson: Because this is my home.

First Stop: No, it ain't. We don't want you here. There's going to be a day that you wish to hell you was local. Might think about putting that house up for sale while you can sell it.

Mr. Henderson: Why is that?

First Stop: Well, this economy might just fall and you'll be sitting on your ass with a house. Then you can go home and bitch about how you was treated in 357. Then you'll be sitting out there bitching about all the tramps taking your f__ work.

[Henderson moved to within a few inches of the referral window.]

Mr. Kimble: He's another one that tramped out of here and then came back. Should have stayed on the f__ road.

Mr. Avena: He was a glutton for punishment. Hammers and knives and he came back for more this week.

Cieklinski received dispatch to report to Newtron on May 27. Before Cieklinski reported to the jobsite, Westover telephoned Bellard and asked him to spin the book jumper who had accepted the dispatch.[18] Bellard said he could not do it. Westover said he was disappointed in Bellard and wanted to know if he was sure about his decision. He said, "I can guarantee you we'll back you up on this one." Bellard said he would talk to Byrd and get back to Westover.

Bellard spoke to Byrd and Allen about his conversation with Westover. Both men said they supported his decision. However, about 2 days later, Allen told Bellard he had decided not to hire Cieklinski. When Cieklinski reported to the Big Horn jobsite on the following day, Bellard apologized and told him he had to spin him, that it was out of his hands, and he would have to return to the hall and straighten out the problem there.[19] A couple of days after Bellard refused to hire Cieklinski, Egge told Bellard that prior to Cieklinski's reporting to the jobsite, Egge had warned Allen of potential sabotage problems if they hired Cieklinski.[20]

After having been rejected for employment by Newtron, Cieklinski signed Respondent's out-of-work list on the following day. Thereafter, he did not sign the book again and became ineligible for dispatch a week later, as workers must sign the list each Wednesday to be eligible. Cieklinski was unwilling to sign the list because of what he had gone through. Although he continued to maintain a residence in Las Vegas, he obtained work in Los Angeles, California, as a traveler.[21]

[18] Although Bellard could not recall if Cieklinski was named in the conversation, it is clear from the circumstances that he was the individual referred to.

[19] This conversation as related by Bellard is substantially corroborated by a tape recording made of the exchange by Cieklinski.

[20] Some sabotage occurred at the jobsite but investigation failed to identify the instigator(s). Egge admitted having dinner with Allen but denied making any such statement to Bellard. I credit Bellard's testimony.

[21] Respondent asserts that since September 2002, Cieklinski has been ineligible to sign book one because of change of residency. The evidence does not support such a conclusion.

In June, Allen told Bellard he could not wait to get rid of the other book jumper (Henderson). Two to three weeks later, Allen told Bellard to lay Henderson off, to make it look legitimate—like they weren't picking on a book jumper, and to choose another worker to lay off also. Bellard thereafter laid off Henderson and Eric Richardson, the last two workers hired, on July 3. Bellard falsely told the two that work was coming to an end.[22]

After his layoff, Henderson again signed the out of work list. During July, August, and the first half of September, when the union dispatcher called his name, Henderson asked that he be put on the side. On September 15, Henderson and Nairn accepted dispatches to DYNA Electric at the Mandalay Bay jobsite. Afterward, as Henderson stood 5 to 8 feet away from the referral window, various Local 357 members approached him and, similar to the previous incidents, berated him about having accepted a call. During the harassment Bennington, occasionally Poma, and once Large, looked on.

After enduring several minutes of Local members' hostile reproaches, Henderson and Nairn left the hiring hall and went into the parking area. There, in a group of about eight people including Local 357 members, Gering denounced Henderson, in pertinent part, as follows:

Date and Place of Conversations

Outside the Hiring Hall

September 15

Speakers

Mr. Henderson
Jennifer Zambrano (Ms. Zambrano), Local 357 member
Eddie Gering (Mr. Gering), Local 357 member, and chairman Executive Committee
Numerous unidentified voices

Conversations

Mr. Gering: . . . This is my f__ local right here. Why the f__ don't you go back to North Carol-f__[ina]?

Mr. Henderson: You better leave me alone.

Mr. Gering: Yeah? And what's going to happen, man? What's going to happen if I f__ sit right here and call you a piece of sh__." What are you going to do about that, huh? The piece of f__ sh__ that you are, m__-f__, what are you going to do about that? You going to sit here and let a little m__-f__ like me call you a f__ low-life f__ piece of sh__? What the f__ they teach you in North Carolina, m__-f__? Huh? What the f__ they teach you there, man? To f__ f__ your brothers? . . . Coming to this local, f__ taking this work. Huh? We got local people on the books waiting for them f__ jobs, man.

. . . .

Unidentified Male: You can do the right f__ thing and turn that f__ call back in. Do the right f__ thing.

Mr. Gering: Dude, you ain't in North Carolina, man. You're in 357. This sh—'s not acceptable. It may be f__ legal, but it ain't acceptable, dude.

. . . .

Mr. Gering (pointing his finger at Mr. Henderson): Well, he's the scumbag that started this sh__. . . . That's why I'm f__ focusing on you, because you're the scumbag that started this f__ sh__. So what are you gonna do, man, huh? What, you gonna beat me up? Is that what you're gonna do?

Mr. Henderson: You're the one doing all the talking, aren't you?

. . . .

Mr. Gering: . . . Don't tell me about it. I know the f__ law. I know the rules, man. There's f__ laws and then there's rules. Rules is: You come here as a guest, you don't f__ come here and take our f__ work. We got people on the book. . . . You wait your f__ turn, if it gets to you, and then you take it. You don't f__ jump the book. . . . You're a f__ rate; you're a f__ worm; you're a f__ scab.

. . . .

Mr. Gering: You can f__ get in your cars and drive off, but I'll guarantee you it ain't over, man. I'm gong to make it my f__ quest.[23]

Unidentified Male: There's water waiting for you at Mandalay . . . we'll get the word out.

Ms. Zambrano (who had been talking on her cell phone, telling someone Mr. Henderson was going to take the call to the Mandalay Bay job): Don't worry, brother. You're taken care of. Just like you took care of us.

I do not find it necessary to describe further this verbal attack on Henderson. Suffice it to say that with virtually no response from Henderson, Gering, with group support, continued his repetitiously obscene harangue. Gering admitted to an "unpleasant confrontation" with Henderson about his accepting dispatch although Gering knew it was illegal to impose a rule that travelers go on the side. He was angry with Henderson because he chose "not to abide by traditions and standards of conduct that we impose upon ourselves."

Michael David Naddeo (Naddeo) a traveler from Local 640 out of Phoenix, Arizona, was outside the union hall during the above-described confrontation in the parking lot. He saw Large nearby talking to someone in a truck. Naddeo approached Large and spoke to him briefly about a grievance. Then Naddeo looked toward Henderson and the group and said, "Terry, looks like you're going to have another lawsuit on your hands."

Large said, "All I see is some brothers having a disagreement; what goes on in the parking lot is none of my business."

[22] Respondent argues Bellard was motivated to testify dishonestly because of a dues dispute he had with Respondent. As noted above, I found Bellard to be a forthright and sincere witness. I credit his testimony.

[23] According to Gering, by that comment, he meant he would continue to let Henderson and others know what Henderson was doing wrong.

Large's denial of this conversation was vague. When asked if he remembered someone pointing out the September parking lot argument to him, he answered, "Not to any detail." He then testified he talked to 200 to 300 people every morning and ever couldn't remember "Mike coming up and saying anything to me at any given time." As with Large's other denials, I do not find this one credible.

After observing the group's verbal attack on Henderson in the parking lot, Nairn returned to the hiring hall and turned in his job referral to Large. There is no evidence Large inquired what had prompted Nairn's change of mind.[24]

On October 3, Henderson requested a copy of the side list from Large. Large asked if Henderson had a tape recorder on him. Large refused to give Henderson a copy of the side list, saying he didn't have one, that he had thrown it away.

Henderson did not complain of any of the local members' conduct and harassment to any of Respondent's business agents or officials because he felt there was no point in complaining to people who "sicked [sic] [the local members] on us."

V. DISCUSSION

A. Agency Status of Egge and Gering

Section 2(13) of the Act provides:

> 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.

It is well established that, under Section 2(13) of the Act, employers and unions are responsible for the acts of their agents in accordance with ordinary common-law rules of agency. *Town & Country Supermarkets*, 340 NLRB 1410 (2004), citing *Longshoremen ILA (Coastal Stevedoring)*, 313 NLRB 412, 415 (1993), remanded 56 F.3d 205 (D.C. Cir. 1995), cert. denied 516 U.S. 1158 (1996). The Board has also noted, "When applied to labor relations . . . agency principles must be broadly construed in light of the legislative policies embedded in the Act." *Longshoremen ILA*, supra, stating further at 417, "Courts have concluded that under the NLRA, agency principles must be expansively construed, including when questions of union responsibility are presented [citations omitted]." The Board adopts the concept of apparent authority and, when determining whether it has been created, notes (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity. *Pratt Towers, Inc.*, 338 NLRB 61, 72 (2002).

Egge was Respondent's union steward on the Big Horn jobsite at the time he asked Bellard to spin Henderson and threatened retaliation if he did not. As union steward, Egge discussed employee complaints, and safety and pay issues with the jobsite supervisor, had authority to write grievances and to resolve them, and served as liaison between Respondent and the jobsite. I find Egge had apparent authority to act on behalf of Respondent during his conversations with Bellard, even if he lacked actual authority. Later, Westover, an admitted agent of Respondent, reinforced Egge's apparent authority; when Mr. Bellard asked Westover what he wanted to do about the prospective book jumper, Westover implicitly espoused Egge's appeals and threats by encouraging Bellard to do the "right thing" and by promising him personal benefit if he did so. Accordingly, I find Respondent gave Newtron a reasonable basis for believing that Egge had the apparent authority to make the requests and threats herein. *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446, 447 (1991).

At the time Gering verbally assaulted Henderson on September 15, he was in a brief hiatus from his position as union organizer but was still the chairperson of the Respondent's executive committee. Local 357 members contacted him with their concerns about travelers accepting referrals instead of going on the side because, in Gering's view, they knew he had held a position with Respondent. There is no evidence Gering disavowed authority or ability to deal with the concerns of members who called him. Moreover, Gering conducted his verbal assault in view of Large, a circumstance that must have demonstrated to all who viewed it that Respondent had cloaked him with authority to engage in the conduct. Id. I find Gering was Respondent's agent when he harangued Henderson on September 15.

B. Respondent's 8(b)(1)(A) and (2) Conduct

Union-operated exclusive hiring halls are permissible employment systems when lawfully memorialized in collective-bargaining agreements. *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961). In operating hiring halls, unions must follow clear and unambiguous standards set out in a collective-bargaining agreement. Further,

> A union which operates a hiring hall must represent all individuals seeking to utilize that hall in a fair and impartial manner. In this regard, the Board has held that notwithstanding the absence of specific discriminatory intent, "any departure from established exclusive hiring hall procedures which results in a denial of employment to an applicant . . . inherently encourages union membership, breaches the duty of fair representation owed to all hiring hall users, and violates Section 8(b)(1)(A) and (b)(2)," absent demonstration of a legitimate justification. *Cell-Crete Corp.*, 288 NLRB 262, 264 (1988).

A union operating an exclusive hiring hall may not discriminate with respect to registration and referrals on the basis of membership or nonmembership in the union. *Electrical Workers Local 3 (White Plains),* 331 NLRB 1498 (2000). As stated by the Board:

> The operation of a union hiring hall imposes considerable responsibilities on the union agents in charge of the hall. Thus, they must neither foster nor countenance discrimination with regard to access to, or referral from, the hall on the basis of International union membership, local union membership, or any other arbitrary, invidious, or irrelevant considerations [citations omitted]. *Sachs Electric Co.*, 248 NLRB 669, 670

[24] After September 15, Nairn did not accept any dispatch until November 17 when he was referred to a Bechtel jobsite without incident. Working at that jobsite requires a daily 4-hour round-trip bus ride, which supports an inference that it was not a sought-after job.

(1980) [enfd. in part sub nom. *NLRB v. Electrical Workers Local 453*, 668 F.2d 991 (8th Cir. 1982)].

Section 8(b)(2) of the Act provides that it is an unfair labor practice for labor organizations "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)" of the Act, i.e., "in regard to hire or tenure of employment or any term or conditions of employment to encourage or discourage membership in any labor organization."

The General Counsel contends that since March 1, Respondent has independently violated Section 8(b)(1)(A) of the Act by the following conduct:

1. Since March 1, maintaining at its hiring hall the side list practice and procedure whereby travelers surrendered employment referral opportunities to permit dispatch of Local 357 members and applying said side list practice to Mr. Cieklinski, Mr. Henderson, Mr. Nairn, and other travelers.

2. On March 7, threatening travelers with denial of membership in Local 357 and consequent loss of job opportunities because they refused to surrender job referrals to local members.

3. On March 7, May 16 and 23, and September 15, restraining and coercing travelers into surrendering job referrals to members of Local 357 by participating in, acquiescing in, or failing to take any action against members of Local 357 who threatened bodily harm and disparaged travelers who accepted job referrals.

4. On October 3, failing and refusing to provide travelers with requested copies of the side list.

The General Counsel also contends that since March 1, Respondent has violated Section 8(b)(2), (1), and (A) of the Act by the following conduct:

1. On May 18, requesting Newtron to refuse to hire Mr. Henderson and in late May, requesting Newtron to discharge Mr. Henderson, thereby causing or attempting to cause Newtron to refuse to hire and to discharge Mr. Henderson.

2. On May 23, requesting Newtron to refuse to hire Mr. Cieklinski, thereby causing or attempting to cause Newtron to refuse to hire Mr. Cieklinski.

The evidence is persuasive, indeed compelling, that Respondent was at all relevant times aware that its longstanding hiring hall side-list practice was maintained and perpetuated through pressure exerted overtly by Local 357 members and covertly by Respondent. Members and Respondent's agents alike referred pejoratively to travelers who did not abide by the side-list practice as "book jumpers." Not only was Respondent aware of its members' hostility to book jumpers, Respondent's agents supported and even fostered the side-list practice. On March 7, when Cieklinski told Westover he would have to eschew the side-list practice that day and take a job, Westover failed to affirm his legal and contractual right to do so. Rather Westover warned him of disadvantageous ramifications, including inability to obtain Local 357 membership. Even Westover's wishing Cieklinski luck in jumping the book was, in the circumstances, a none-too-subtle message that Respondent would not support his action. When, shortly thereafter, Cieklinski accepted the job referral to which he was entitled, the dispatcher, Large, expressed his surprise and asked if Cieklinski were sure he wanted to do it. I cannot accept Respondent's assertion that Large's comment simply denoted surprise that Cieklinski was changing his usual custom of side listing his name. Rather, I conclude Large's reaction was yet another unsubtle message of nonsupport, immediately reinforced by Large's unfounded threat that the job would only last 41 hours.

Immediately after Cieklinski accepted the job referral and while within close proximity to the office window from which Large and Westover could oversee the hall, Local 357 members subjected Cieklinski to name calling and threats of physical retaliation if he did not revoke his referral. Credible testimony established that such confrontations were atypical, and it is reasonable to infer that Respondent's officials would have at least inquired into the cause of the angry disruption unless they approved it. There is no other reasonable explanation of their nonintervention and their complacent acceptance of Cieklinski's subsequent job referral revocation. Indeed, Westover and Large implicitly evinced their approbation of the harassment and tacitly encouraged it by accepting without question or comment Cieklinski's return of the referral for Local 357 membership benefit. Cieklinski and later Henderson's failure to complain to the Local 357 representatives about what had occurred does not change this conclusion. Under all the circumstances, including the inaction of the referral appeals committee, it was demonstrably futile for any of the travelers to complain. See *Iron Workers Local 433 (Steel Fabricators Assn.)*, 341 NLRB 523, 527 (2004).

Respondent contends that no union representative heard threats to or harassment of Cieklinski or Henderson, implicitly claiming not only uninvolvement in but also ignorance of any coercion. Respondent's claims are so disingenuous as to approach mendacity. Tilmont had discussed Cieklinski's complaints with Respondent's business manager, Jones. Cieklinski had complained to IBEW district officers about the situation and had taken his complaint to a hearing before the referral appeals committee, over which Respondent's president presided. Local 357 members regularly raised the issue of travelers refusing to go on the side in union meetings, and there is no evidence that Respondent's officials explained the travelers' legal right to do so or attempted in any way to restrain union members' disapprobation. Moreover, Respondent directly solicited Newtron to refuse to hire Henderson and Cieklinski because they had flouted the side-list procedure. As to Respondent's contention that it was oblivious of the hiring hall harassment of Cieklinski and Henderson, the argument lacks credibility. While union representatives present in the hall during the harassment probably did not hear all the exchanges, tape-recording clarity, supporting testimony, and other circumstances set forth herein make it reasonably certain they heard enough to know what was going on, but did nothing to stop it.

When Henderson legally accepted a dispatch on May 16, Respondent again turned a blind eye to the resulting and outrageously abusive uproar among its members and other job applicants who openly verbally attacked and threatened Henderson. While Large could not deny the incident occurred, he mini-

mized it by calling it a "commotion" he could not be bothered to deal with. When Local 357 members and other job applicants directed similar and volubly open vilification at Cieklinski and Henderson on May 23, Respondent's agents again remained deliberately oblivious to what they could not possibly have failed to observe.

On September 15, Local 357 membership again directed threats and hostility toward Henderson and Nairn for accepting dispatches in the most bullying and intimidating display of animosity yet. This time Respondent's agent, Gering, spearheaded the attacks. Even assuming Respondent should not be held directly accountable for the threats and intimidation, credible evidence establishes that Large was fully aware of Gering's conduct on that occasion and deliberately ignored it, saying, "All I see is some brothers having a disagreement; what goes on in the parking lot is none of my business." Apparently, Respondent viewed what had gone on in the hall itself on that and previous occasions as equally beyond its responsibility. When, on September 15, after enduring threats and hostility, Nairn surrendered his job referral, no dispatching official asked why he had done so, investigated the circumstances, or took any action whatsoever to restrain the hostile tactics of the hiring hall denizens.

Respondent contends that it cannot be held liable for coercive conduct unless committed by the labor organization or its agents. I cannot agree. Even aside from the September 15 conduct of Gering, Respondent's agent, Respondent must bear responsibility for conduct acquiesced in and condoned by its representatives, which takes no steps to disavow. See *Laborers Local 616 (Bruce & Merrilees Electric Co.)*, 302 NLRB 841 (1991); *Dover Corp.*, 211 NLRB 955, 957 (1974), enfd. 535 F.2d 1205 (10th Cir. 1976). Respondent's ongoing and frequently demonstrated indifference and inaction toward the hiring hall applicants' harassment of disobliging travelers are not only inconsistent with its duty to represent all hiring hall applicants fairly and impartially, they are convincing evidence of its acquiescence in and approval of the conduct. Moreover, the evidence does not support any argument that Respondent's actions or inactions in this matter resulted from mere negligence or inadvertent mistake so as to preclude liability.[25] Rather Respondent's conduct fits within those descriptive terms the Board uses to describe breaches of a union's duty to exercise authority over referrals in a nonarbitrary and nondiscriminatory fashion:

> "[A]rbitrary,' 'invidious,' 'discriminatory,' 'hostile,' 'unreasonable,' 'capricious,' 'irrelevant or unfair considerations,' without 'honesty of purpose'" [all of which] indicate deliberate conduct that is intended to harm or disadvantage hiring hall applicants. They all imply that the union is either using its power to control referrals against the interests of individual applicants or classes of applicants, or that it may do so at any time, at its discretion. *Plumbers Local 342 (Contra Costa Electric, Inc.)*, 336 NLRB 549, 551 [(2001), affd. sub nom. *Jacoby v. NLRB*, 325 F.3d (D.C. Cir. 2003)], quoting *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67, 89 (1989).

[25] See *Plumbers Local 342 (Contra Costa Electric)*, 329 NLRB 688 (1999), revd. sub nom. *Jacoby v. NLRB*, 233 F.3d 611 (D.C. Cir. 2000).

Respondent also contends it is not responsible for the conduct of nonrepresentatives because it published an antiharassment policy and because Cieklinski, Henderson, and Nairn did not follow the relief provisions in that policy. Respondent further argues that the three men did not exhaust available internal union remedies. While it is true that the three travelers did not follow the specific procedures envisioned by the antiharassment policy or file internal union charges against IBEW members who harassed them, the evidence is clear that such would have been acts of futility. Respondent was well aware of the harassment. Respondent had already ignored an opportunity to address the problem when Cieklinski sought and obtained a hearing before the appeals committee regarding the integrity of the referral procedure. Following that hearing, Respondent not only took no action, but by its subsequent decision denied there was any problem, asserting the committee had found no violation of the inside construction agreement. After the committee's decision and after Respondent's open and deliberate disregard of the harassment, the protesting travelers were justified in believing it was useless to seek Respondent's help.

By its conscious and willful refusal to acknowledge or investigate its membership and other's conduct or to take steps to control it, Respondent restrained and coerced travelers into surrendering job referrals to members of Local 357 and participated in, acquiesced in, and failed to take any action against members of Local 357 or others who threatened bodily harm and disparaged travelers who accepted job referrals, in violation of Section 8(b)(1)(A) of the Act. While specific evidence of travelers being deterred from accepting job referrals by Respondent's unlawful conduct was presented only as to Cieklinski, Henderson, and Nairn, it is reasonable to conclude other travelers were similarly deterred.

Credible evidence also establishes that Respondent's agents actively sought to prevent Newtron's employment of both Henderson and Cieklinski. On about May 16, through Egge and Westover, Respondent unsuccessfully attempted to cause Newtron to refuse to hire—that is, discriminate against—Henderson by asking Bellard to spin Henderson and threatening consequences if he did not. Respondent's lack of success makes its efforts no less a violation of Section 8(b)(2). On May 23, through the same two agents, Respondent successfully caused Newtron to refuse to hire, or to spin, Cieklinski. In both situations, Respondent was motivated by its animosity toward the two travelers having lawfully accepted dispatch before all Local 357 members on book one had been dispatched. Respondent's conduct in both instances violated Section 8(b)(2) of the Act.

The General Counsel argues that Respondent caused Newtron to lay off Henderson. While there is no direct evidence that any agent of Respondent requested Henderson's layoff, the evidence does establish that Respondent made it abundantly clear it did not want Henderson on the job. Egge threatened that jobsite sabotage might follow Henderson's employment, and when Bellard later complained of work slowdown, Egge said if Newtron got rid of Henderson, more work would get done faster. Egge also told Bellard that employees would re-

fuse to work overtime if Respondent assigned it to Henderson. In these circumstances, Allen's direction to Bellard to lay off Henderson and to lay off another employee to make it look legitimate was as instigated by Respondent as if Respondent had directly demanded the action. Accordingly, I find Respondent attempted to cause and did cause Newtron to lay off Henderson in violation of Section 8(b)(1)(A) and (2) of the Act.

The complaint further alleges that Respondent refused to provide Cieklinski with a copy of the side list when he requested it on October 3 in violation of Section 8(b)(1)(A) of the Act. Board law is clear that hiring hall records must be shown to hiring hall users on request. *Bartenders & Beverage Dispensers Local 165 (Nevada Resort Assn.)*, 261 NLRB 420 (1982). Although not as formally constituted or maintained as dispatch and referral records, it is clear Respondent kept a daily side list on which to document the names of travelers or other individuals who wished to defer dispatch. Such a list is a hiring hall record, which Respondent is obligated to furnish hiring hall users on request. While Large denied any list existed that he could produce for Cieklinski, I have not found him to be reliable, and I do not accept his assertion to Cieklinski that no side list existed on October 3. Accordingly, I find that in not disclosing its side list to Cieklinski on October 3 the Union violated Section 8(b)(1)(A) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. Newtron Heat Trace, Inc. is and has been at all times material an employer engaged within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(1)(A) of the Act by:

(a) Maintaining at its hiring hall a side-list practice and procedure whereby travelers surrendered employment referral opportunities to permit dispatch of Local 357 members, and applying said side-list practice to Cieklinski, Henderson, Nairn, and other travelers.

(b) Threatening travelers with denial of membership in Local 357 and loss of job opportunities because they refused to surrender job referrals to local members.

(c) Restraining and coercing travelers into surrendering job referrals to members of Local 357 by participating in, acquiescing in, or failing to take any action against members of Local 357 or other individuals who threatened bodily harm and disparaged travelers who accepted job referrals.

(d) Failing and refusing to provide Cieklinski with requested copies of the side list.

4. Respondent violated both Section 8(b)(2) and Section 8(b)(1)(A) of the Act by:

(a) Requesting Newtron to refuse to hire Henderson and attempting to cause and causing Newtron to lay off Henderson, in violation of Section 8(a)(3) of the Act.

(b) Requesting Newtron to refuse to hire Cieklinski, thereby attempting to cause and causing Newtron to refuse to hire Cieklinski in violation of Section 8(a)(3) of the Act.

REMEDY

Having found Respondent has engaged in certain unfair labor practices, I shall recommend it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act including the posting of a remedial notice.

I shall also direct Respondent to make Michael J. Cieklinski, Richard Brian Henderson, Al Nairn, and other travelers affected by Respondent's unlawful conduct whole, with interest, for any loss of job opportunity caused by Respondent's violations of both Section 8(b)(1)(A) and Section 8(b)(2) of the Act as found herein.[26] Such make-whole remedy shall include payment to Cieklinski, Henderson, Nairn, and other affected travelers and to the contractual fringe trusts for all loss of wages and benefits and contractual fringe benefits, plus appropriate late trust payment penalties as provided by the collective-bargaining agreement, which would have been paid for the employment lost as a result of Respondent's unfair labor practices.

Backpay shall be calculated in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Contractual payments shall be made consistent with *Merryweather Optical Co.*, 224 NLRB 1213 (1976).

[Recommended Order omitted from publication.]

[26] Respondent objects to so broad a remedy, contending the evidence does not support a conclusion that travelers are coerced to go on the side list. As explained earlier, the evidence shows pervasive, albeit usually tacit, coercion condoned and acquiesced in by Respondent. Therefore, the remedy is appropriate. Determining the identities and job opportunity losses of and giving notification to such travelers as may have been coerced is left to the compliance stage of this matter.