International Union of Operating Engineers Local 406, AFL–CIO (Ford, Bacon & Davis Construction Corporation) ***and*** **Lamar Honey.** Case 15–CB–2348

June 8, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 29, 1981, Administrative Law Judge Hutton S. Brandon issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein.

As set forth more fully in the Administrative Law Judge's Decision, Respondent's business agent, Charles Hayes, repeatedly threatened to use his hiring hall authority to retaliate against Charging Party Lamar Honey because Honey had refused in March 1978 to step down from a position in order to permit Hayes to put his choice in the job. The Administrative Law Judge found that Hayes carried out these threats by frequently referring for jobs persons whose names appeared below Honey's on the hiring hall out-of-work list.[2] We agree with the Administrative Law Judge's findings that Respondent violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Honey for employment pursuant to its operation of an exclusive hiring hall, and by informing Honey that it was denying him referrals because he had failed to comply with Respondent's request that he relinquish a job.

We believe, however, that the Administrative Law Judge erred in failing to find that additional violations occurred in June 1980[3] when Respondent changed its 5-day rule to a 6-day rule. Prior to October 15, the posted hiring hall procedures provided that any person who was referred to a job that lasted longer than 5 days would have his name removed from the out-of-work list. Acting in the belief that this rule was in effect, Honey turned down a 6-day job referral on September 22. As found by the Administrative Law Judge, however, Respondent had changed this 5-day rule on June 22 when it retained the names of hiring hall users Crumley, Miller, Howard, Kavalir, and Harper on the out-of-work list ahead of Honey, even after those five individuals had worked 6 days for a contractor pursuant to a referral by Respondent.[4]

Respondent denies that this change in the 5-day rule was motivated by a desire to discriminate against Honey. Instead, Hayes testified that the rule had been changed permanently to a 6-day rule in mid-1978 because of the chronically poor employment situation in the area and so as not to penalize applicants who were referred to jobs of only 6 days' duration. The change to a 6-day rule was not announced generally, however, until October 15, 1980, some 2 weeks after the issuance of the complaint in the instant case. Users of the hiring hall were informed of the change by way of a letter from Respondent's business manager that was posted at the hall. This letter claimed that the change to a 6-day rule had been in effect since mid-1978.

The Administrative Law Judge discredited Hayes and determined that the 6-day rule was actually implemented on June 22 when Respondent retained on the hiring list five employees who had worked for 6 days. He decided that Hayes' testimony regarding the alleged 1978 change of the 5-day rule was a contrived defense. Nevertheless, the Administrative Law Judge concluded that the June change from a 5-day to a 6-day rule was not specifically designed to discriminate against Honey nor did it result in a specific denial in employment to him. The Administrative Law Judge also decid-

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

[2] Names were listed for referral in the order in which applicants sought use of the hiring hall. Respondent then referred applicants to jobs generally on a first-in, first-out basis. The Administrative Law Judge found that Respondent discriminatorily failed to consider Honey for referral when making 17 referrals to short-term positions. Among those referrals were the July 6, 1980, referrals of Ralph Robinson and Tommie McMurray to Ram Construction. The Administrative Law Judge failed to note additionally that the original referrals of these employees led to "call-back" referrals of both on July 21, 1980, and of McMurray on October 26, 1980.

[3] All subsequent dates refer to 1980, unless otherwise stated.

[4] As a result of maintaining their preferred positions on the list, at least Crumley was subsequently referred to jobs ahead of Honey. The names of Miller, Howard, Kavalir, and Harper also were crossed off the list from June 22 to November 12, but since there were no referral slips introduced regarding those four individuals, the Administrative Law Judge declined to conclude that they were removed from the list because they had received referrals to long-term jobs. We find it reasonable to infer, although unnecessary to decide, that those four individuals were, in fact, referred to jobs ahead of Honey during the June 22 to November 12 period.

ed that this change in the rule did not breach Respondent's duty of fair representation.

We disagree. The change to a 6-day rule was not an isolated event, but must be considered in light of Respondent's other out-of-turn referrals motivated by unlawful discriminatory animus towards Honey. In view of that animus, we regard as inescapable the conclusion that Respondent decided to retain Crumley, Miller, Howard, Kavalir, and Harper on the referral list after they worked a 6-day job simply because that was an effective way of denying Honey subsequent referral opportunities.

Even assuming the absence of specific discriminatory intent, a violation must be found in the circumstances of this case. The Board has held that any departure from established exclusive hiring hall procedures which results in a denial of employment to an applicant falls within that class of discrimination which inherently encourages union membership, breaches the duty of fair representation owed to all hiring hall users, and violates Section 8(b)(1)(A) and (2), unless the union demonstrates that its interference with employment was pursuant to a valid union-security clause or was necessary to the effective performance of its representative function.[5] Respondent has made no such showing. In the absence of any legitimate justification, we conclude that the change to a 6-day rule violated Section 8(b)(1)(A) and (2).

In addition, it is undisputed that Respondent failed to notify those who use its exclusive hiring hall about the June 22 policy change until October 15. This failure to give timely notice of a significant change in referral procedures was arbitrary and in breach of its duty to represent job applicants fairly by keeping them informed about matters critical to their employment status.[6] Accordingly, we find that Respondent further violated Section 8(b)(1)(A) by changing the 5-day referral rule without giving timely notice to all job applicants.

ORDER[7]

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Union of Operating Engineers Local 406, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Coercing or restraining employees, members, job applicants, or registrants by informing them that they are objects of retribution in the operation of its exclusive hiring hall and referral system because they are in disfavor with Respondent.

(b) Causing or attempting to cause employers to discriminate against Lamar Honey or any other employees, members, job applicants, or registrants by discriminatorily failing and refusing to refer them to Ford, Bacon & Davis Construction Corporation and other employers pursuant to the operation of its exclusive hiring hall and referral system.

(c) Operating its exclusive hiring hall and referral system in a discriminatory or arbitrary manner and failing to timely and fully inform all users of changes in the operating procedures and rules of said hiring hall and referral system.

(d) In any like or related manner restraining or coercing employees, members, job applicants, or registrants in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Make Lamar Honey whole for any loss of earnings and benefits which he may have suffered by reason of Respondent's unlawful denial of referral to short-term jobs, out-of-district jobs, recall opportunities, jobs obtained by individuals as a result of the June 22, 1980, change from a 5-day to a 6-day rule, and master mechanic positions. Make whole any other employees for any loss of earnings and benefits which they may have suffered by reason of Respondent's aforementioned June 22, 1980, rule change. Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[8]

[5] See, e.g., *Journeymen Pipe Fitters Local No. 392, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of U.S. and Canada, AFL-CIO (Kaiser Engineers, Inc.)*, 252 NLRB 417 (1980), and cases cited therein. We also note that Honey may not have been the only hiring hall user who lost employment because of the rule change, inasmuch as several other employees testified that after June 22 they too acted in reliance upon the continued existence of the 5-day rule, until the October announcement of the change. We shall leave to the compliance stage of this proceeding the question of whether any of these or other employees may have suffered a loss of earnings because of the change in the 5-day rule and therefore are entitled to backpay.

[6] *Journeymen Pipe Fitters Local No. 392, supra* at 421. The Administrative Law Judge distinguished *Pipe Fitters Local No. 392* from the instant case on the ground that Respondent's 5-day rule was not established by contract. That said referral procedure was self-established, rather than specified by contract, is immaterial. The coercive effect of Respondent's arbitrary departure from the rule was not lessened merely because Respondent had unilaterally initiated the rule.

[7] In par. 1(c) of his recommended Order, the Administrative Law Judge uses the broad cease-and-desist language, "in any other manner." We have considered this case in light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), and have concluded that a broad remedial order is inappropriate inasmuch as it has not been shown that Respondent has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. Accordingly, we shall modify the recommended Order and notice by substituting the narrow injunctive language "in any like or related manner."

[8] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all hiring records, dispatcher lists, referral cards and other documents necessary to analyze and compute the amount of backpay due Honey and any other employees under the terms of this Order.

(c) Post at its business offices, hiring hall, and meeting places in the Monroe, Louisiana, district copies of the attached notice marked "Appendix."[9] Copies of said notices on forms provided by the Regional Director for Region 15, after having been duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Additional copies of the attached notice marked "Appendix" shall be signed by an authorized representative of Respondent, and forthwith returned to the said Regional Director for posting by Ford, Bacon & Davis Construction Corporation and other employer-parties to the exclusive hiring hall and referral system, if said employers are willing, at their places of business in the Monroe, Louisiana, district where notices to their employees and members of Respondent are customarily posted.

(e) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order what steps Respondent has taken to comply herewith.

[9] In the event that 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."

APPENDIX

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

WE WILL NOT coerce or restrain employees, members, job applicants, or registrants in the exercise of the rights guaranteed them by Section 7 of the Act by informing them that they are being subjected to retribution in our operation of the exclusive hiring hall and referral system because they are in disfavor with us.

WE WILL NOT cause or attempt to cause employers to discriminate against Lamar Honey or any employees, members, job applicants, or registrants by discriminatorily failing and refusing to refer them to Ford, Davis & Bacon Construction Corporation or any other employer that is party to our exclusive hiring hall and referral system.

WE WILL NOT operate our exclusive hiring hall and referral system in a discriminatory or arbitrary manner or fail to timely and fully inform all employees, members, job applicants, and registrants of changes in the procedures and rules of said hiring hall and referral system.

WE WILL NOT in any like or related manner restrain or coerce employees, members, job applicants, or registrants in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Lamar Honey whole, with interest, for any loss of earnings and benefits which he may have suffered because of our failure and refusal to refer him in a nondiscriminatory manner on and after June 17, 1980, to work with Ford, Bacon & Davis Construction Corporation or other employers.

WE WILL make any other employees whole, with interest, for any loss of earnings and benefits which they may have suffered because of our unlawful June 22, 1980, change of the 5-day rule to a 6-day rule.

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 406, AFL-CIO

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge: This case was heard by me at Monroe, Louisiana, on June 15-16, 1981. The charge was filed by Lamar Honey, an individual, herein called Honey, on August 6, 1980,[1] and the complaint was issued on September 29 and amended on May 21, 1981. As amended the complaint alleges, *inter alia*, that the International Union of Operating Engineers Local 406, AFL-CIO, herein called the Union or Respondent, violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, herein called the Act, by failing and refusing to refer Honey to jobs with Ford, Bacon & Davis Construction Corporation and various other employers pursuant to an exclusive hiring hall arrangement during the period February 29 through November 12, and from December 16 to the date of the hearing herein. The primary issue pre-

[1] All dates are in 1980 unless otherwise stated.

sented is whether there was a failure or refusal to refer Honey, and, if so, whether such failure or refusal was based upon reasons prohibited under the cited sections of the Act. An additional issue is presented regarding whether the Union through its agent, C. W. "Sub" Hayes, violated Section 8(b)(1)(A) of the Act by informing an employee that he was subjecting him to retribution in job referrals because of discriminatory and unlawful considerations.

Upon the entire record,[2] including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Union, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Ford, Bacon & Davis Construction Corporation, herein referred to as FBD, is a New York corporation engaged in industrial engineering and construction work at various locations throughout the United States including a location at Sterlington, Louisiana. During the 12-month period preceding issuance of the complaint herein, FBD in the course and conduct of its business operations purchased and received at its Sterlington, Louisiana, location goods and materials valued in excess of $50,000 directly from points located outside the State of Louisiana. The complaint alleges, the Union by its answer admits, and I find that FBD is, and has been at all relevant times, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Union further admits the complaint allegation and, I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Union at the times material to this case was party to a collective-bargaining agreement with the Northeast Louisiana Contractors Association, A.G.C., Inc. (herein referred to as A.G.C.), covering employees working for the various member-employers in the regular job classifications falling within the Union's traditional jurisdiction.[3] Other employers coming into the area for construction work and seeking to utilize the craft skills of employees represented by the Union frequently signed supplemental agreements with the Union which incorporated by reference the terms of the Union-A.G.C. agreement. One such employer was FBD which signed its "Short-Form Composite Agreement Covering Building Trades" with the Union March 31, 1975, and in effect agreed to be bound by the Union-A.G.C. agreement and any extensions and modifications thereto. FBD was, like other employer parties to the agreement, bound by the exclusive hiring provisions of the agreement.

Honey was a member of the Union and had been since 1957. He was well acquainted with Charles W. "Sub" Hayes, the business agent of the Union at the times material herein, and had worked on jobs with Hayes prior to the time Hayes became the business agent of the Union. The record does not establish that Honey had any difficulties with Hayes or the Union prior to 1978. However, in early 1978 Honey received a "call back" to an FBD job at what was referred to as the Erco jobsite south of Monroe, Louisiana. Honey had worked on that site previously and under the referral procedure provided for in the A.G.C. agreement the contractor under the hiring procedures could request by name individuals who had worked for it within the preceding 45 days. In this instance, according to Honey's testimony, Fred Barton, the FBD job superintendent, had contacted Honey directly at his home to recall him to work. Honey in turn had tried unsuccessfully to contact Hayes at the Union to obtain a referral slip.[4] After failing to contact Hayes, Honey proceeded to the job anyway and began work. Shortly thereafter, he telephoned Hayes who told him to come to see him. Honey left work to see Hayes for the referral. Hayes, still according to Honey, accused Honey of hiring "over the fence" (outside the referral system), and a heated argument followed. Nevertheless, Hayes issued Honey a referral and he proceeded on February 22, 1978, back to the FBD job where for the next 2 or 3 weeks he worked as a "cherry-picker" operator.

Honey testified that around early March 1978 Job Superintendent Barton asked him to do some of the "book work."[5] Such "book work" was normally associated with the "master mechanic" position, a position provided for under the A.G.C. collective-bargaining agreement when certain numbers of journeymen in the Union's craft were employed on the job.[6] Honey agreed to do the "book work" for Barton temporarily but would prefer that Barton give the master mechanic position to someone else. Subsequently, however, Barton asked the Union to refer two additional men to the job. Hayes did so, but based upon a provision in the A.G.C. agreement allowing the Union the right to "recommend" a master mechanic Hayes also sent a man out for the master mechanic position. However, after ascertaining that Honey was willing to take the master mechanics job, Job Superin-

[2] The General Counsel's unopposed request to correct the record dated August 31, 1981, is granted and received in evidence as G.C. Exh. 58.

[3] A copy of the Union-A.G.C. agreement effective May 1, 1979, through April 30, 1981, was received in evidence as Resp. Exh. 4.

[4] Notwithstanding the right of the Employer to request an individual who had previously worked for it, the Union according to the testimony of Hayes, nevertheless required the employee to go through the Union and receive a referral slip in order to facilitate receipt of dues-checkoff authorizations.

[5] Such book work had to do with timekeeping, equipment assignment, and job durations.

[6] Honey testified that master mechanics were in effect job foremen. Wade Russell, general construction superintendent of FBD, called by Respondent, testified that master mechanics did supervise work and did no general equipment operation. The master mechanics attended supervisory meetings, granted employees time off, selected employees for overtime, and made recommendations regarding hiring and firing of employees which recommendations were "weighed heavily" by the job superintendents. Under the bargaining agreement, master mechanics received 50 cents per hour more than the next highest paid equipment operators under them. I find the master mechanic position as utilized by FBD to be a supervisory position, and that Honey, while employed as a master mechanic at the Erco site was a supervisor within the meaning of the Act.

tendent Barton sent the Union's recommended man back to the Union.

Hayes met with Honey 2 or 3 days later on the Erco jobsite. Honey testified that Hayes told him that he had "done wrong" with respect to taking the master mechanic job and that the Union was supposed to "put our own people in." Hayes, angered by Honey's refusal to vacate the master mechanic position, told Honey that Honey would have to "come back by me one day or another," and "I'm gonna get you sooner or later."

Honey attended a union meeting around March 27 or 28, and while there he met and talked to Peter Babin III, then business manager of the Union. According to Honey's testimony, Babin referred to Honey's master mechanic job and told him what he had "done wrong," that he should step down from the position and let the Union put their man in and "bring the company to its knees." Honey responded that if the Company were doing wrong he would go along with Babin, but as long as the Company "does right" he could not go along with Babin. Thereafter, Honey discussed with Babin the fact that Hayes had given Honey a hard time on the "call back" referral and had accused him of hiring over the fence. Babin agreed that under the circumstances it was not even necessary for Honey to have been referred out of the hall. At this point, Honey's testimony has it, the two men were approached by union members Pat Tullos, Earl Farmer, and James C. Frith and the conversation turned again to Honey's master mechanic job. Honey asked Babin if he really wanted him to "step down," and Babin replied that he did so they could put "our men in your place." Honey responded that as long as the company was doing right he could not do it. The conversation at that point ended.[7]

Honey testified that about a week after the union meeting, in late March 1978, he had another conversation with Hayes out on the Erco jobsite in which Hayes again urged him to "step down" from the master mechanic position so the Union could put its choice in. Honey again declined stating that he was afraid that if he did he would be fired. Hayes then told him "You'll come by me," and "I'll remember that." Hayes added that Honey would not have another master mechanic's job again as long as Hayes lived in the Local.

Other witnesses presented by the General Counsel attribute similar remarks to Hayes. Thus, Pat Tullos testified that a few weeks after the Erco job began in 1978 he talked to Hayes at the union hall and the subject turned to Honey. Hayes, Tullos testified, remarked that he would get even with Honey, that Honey would have to come back through him, and Honey would probably not work for a while. About 4 weeks later Hayes made a similar remark to Tullos and other employees gathered around a fire barrel at the Erco jobsite. At that time Hayes said that he would see to it that Honey would not be a master mechanic, and Honey would have to come back through the union hall and "sign the books" and Honey would not be going out to work for a while.

Union member James Frith testified that in the spring of 1978 he talked to Hayes at the union hall and Hayes stated that Honey was going to have to come "back to me" and "when he does I'll get him." Frith was corroborated by union member Owen Cobb who placed the statement as occurring the end of May or the first of June 1978.

Finally, Jess Rowsey, another member of the Union, testified for the General Counsel that in the last of March or first of April 1978, Hayes told him in a conversation at the union hall that he would get even with Honey for taking the master mechanic job without permission because he would have to "come back by him sooner or later."

Hayes conceded in his testimony that he had disputed the appointment of Honey as the master mechanic on the Erco site for FBD in 1978. However, in contradiction of the General Counsel's witnesses he denied that he had at any time threatened to "get even" with Honey and otherwise generally denied the remarks attributed to him. Honey testified with the sincerity of a man who perceived himself to have been "wronged." His testimony regarding Hayes' remarks appeared to be indelibly etched into his memory. I found him more credible than Hayes. Moreover, Honey's testimony receives support from the fact that Hayes expressed his intention to retaliate against Honey to union members Tullos, Frith, Cobb, and Rowsey, all of whom I found credible. I thus conclude that Hayes had what he perceived to be cause to "get even" with Honey, and plainly expressed his desire to do so.

B. *The Failure To Refer Honey*

Honey continued to work on the Erco job for FBD until February 15, 1980, when he was laid off. He received no offer of referrals thereafter until Hayes called him for a job of 6 days' duration on September 22, which he refused because he believed that it would put him at the bottom of the referral list again which would lessen his chance for a job of longer duration.[8] He was not offered a referral again until November 12 when he was referred to a job for FBD where he was utilized as a dozier operator engaged in dozing carbon black. Honey described the job as an extremely dirty and unhealthy job. The job lasted 26 days and Honey returned to the bottom of the referral list at the union hall on December 19. He thereafter received no additional referrals until June 9, 1981, when Hayes offered him a 6-day job which he rejected because of the hearing herein on June 15.

Because of the background set forth above and additional evidence related below as well as certain referrals by the Union which appear to be out of order or inconsistent with the operating rules of the referral system, the General Counsel contends that the Union intentionally discriminated against Honey because of his failure to step down from the FBD master mechanic job in 1978. The

[7] Honey's testimony regarding the conversation with Babin was not contradicted. Moreover, it was corroborated by General Counsel witnesses Tullos and Frith, both of whom were union members. Accordingly, and also because Honey impressed me as an honest witness with a generally good and accurate recall, I credit Honey.

[8] In reaching his decision in this regard Honey relied on the "five day" rule which he believed to be in effect. That rule will be discussed *infra*.

additional evidence in this regard was in the form of testimony of Honey about further conversations he had with Hayes, and the testimony regarding remarks of Hayes to certain other persons. Thus, Honey testified that on May 29, after being on the referral list since February 20 without receiving any referrals, he argued with Hayes in the union hall over the application of a provision in the collective-bargaining agreement allowing contractors to recall by name employees who had worked for the contractor within the preceding 45 days.[9] In support of this argument, Honey testified, Hayes referred to Honey's refusal to step down from the master mechanic job at Erco for FBD and told Honey that he had Honey where he wanted him and he was going to get even with him. Honey further testified that Hayes repeated the threat in a resumption of the argument on June 10 in the union hall. While Hayes did not deny talking to Honey on May 28 or 29 he vaguely denied any threats to Honey. I credit Honey's testimony over Hayes. I conclude that Hayes' remarks to Honey regarding "getting even" with Honey because of his prior refusal to accede to the Union's wishes on the FBD master mechanic position in 1978 was clearly coercive and therefore violative of Section 8(b)(1)(A) of the Act as alleged in the complaint.

The General Counsel's contention that the Union disparately applied its hiring hall procedures to discriminate against Honey makes it necessary to examine the Respondent's rules utilized in the operation of its exclusive hiring hall. All applicants seeking to utilize the hall were required to list their names and telephone numbers with the Union as well as the job classifications which they were qualified and sought referral. The names were listed for referral in the order in which they sought use of the hiring hall. The Union then referred employees to jobs generally on a first-in, first-out basis assuming equal qualification of the applicants for the vacancies to be filled.[10]

According to the posted referral rules, short-term jobs, i.e., 1 to 3 days, were offered to "qualified applicants" who are present in the hall. Moreover, employers could "call back" qualified craftsmen who "have been employed by them within the geographical area covered by the contract" if the "craftsmen" called back had worked for the employer within the preceding 45 days.

The posted hiring procedures prior to October 15 stated that "any applicant [for referral] employed more than five (5) days will have his name removed from the out-of-work list unless the business agent is advised that he has not worked five (5) days." It was the testimony of Hayes that in actuality the rule, hereafter referred to as the 5-day rule, was changed in mid-1978 due to the chronically poor work situation in his district and in order not to penalize men who were referred to jobs of 6 days' duration. The change to the 6-day rule was not generally announced, however, until October 15, some 2 weeks after the complaint in the instant case issued, when Hayes posted at the hall a letter from Babin setting forth the change along with a claim that it had been in effect since mid-1978.

The referral procedures do not provide for the referral of applicants to the master mechanic positions. Hayes testified that he had never utilized the list in "recommending" people for master mechanic positions, and that he exercised complete discretion in recommending men for the position. In addition, Hayes also testified that he did not utilize the referral list in sending men to jobs outside his district.

In practice, according to Hayes, in making referrals to the 1 to 3 day jobs, he followed the same procedures outlined in *International Union of Operating Engineers, Local 406, AFL-CIO (New Orleans Chapter, Associated General Contractors of America, Inc.)*, 189 NLRB 255 (1971). In the cited case involving the same Respondent here there appears to have been two procedures utilized for 1- to 3-day referrals depending on which business agent was making the referral. One procedure was to announce the job to those applicants present in the hall and then award the referral to the first applicant responding to the announcement without regard to the applicant's position on the referral list. The second procedure followed by one business agent was more arbitrary; he simply referred whichever individual he chose, again without regard to their position on the referral list or their presence in the hall. The trial examiner in that case noted that both of these procedures left much to be desired, and the latter procedure particularly "lent itself to abuse and arbitrariness sufficient to create suspicion" of discrimination. Nevertheless, he noted that the procedure itself, as in the instant case, was not specifically alleged to be independently violative of the Act, and went on to conclude, with Board approval, that the evidence in that case was insufficient to establish actual discrimination in the application of the referral procedures to the 1- to 3-day jobs.

Hayes' testimony was not clear as to which of the above procedures he followed in making 1- to 3-day referrals. I conclude, however, that he chose the more arbitrary procedure of calling whomever he desired for such jobs without regard to either their presence in the hall or their position on the out-of-work list. This conclusion is buttressed by the fact that Hayes failed to explain exactly how each of those individuals hereafter specified who were below Honey on the out-of-work list but who were referred ahead of him to 1- to 3-day jobs were selected. No claim was made that each was in the union hall at the time the referral request came in. Furthermore, Hayes at one point in his testimony related that under his interpretation of the hiring hall rules, if a "contractor calls for a person for two or three shifts, I have the option to get people out of the hall or just whoever I can get ahold of."

[9] Honey had taken the position that the provision meant 45 workdays while Hayes contended that it referred to calendar days. Consistent with his position and claiming discrimination by Hayes, Honey filed a charge with the Board's Regional Office, Case 15-CB-2318, on June 20. The charge was dismissed on July 29 on the basis that Hayes' interpretation of the 45-day provision was not shown to have been based on unlawful considerations. Resp. Exh. 1, attachments.

[10] Hayes conceded however that in practice when making a referral to a specific classification he did not confine his consideration of a referral applicant to only those classifications listed by the applicant on the referral list.

Documentary evidence in the form of referral slips and monthly referral lists during the relevant periods which were received in evidence establish that a number of individuals listed below Honey on the respective referral lists were referred ahead of Honey. The names, date of referral listing, the date of referral, and the type of referral of those employees admittedly referred ahead of Honey are listed below:

Name	*Date Signed Referral List*	*Date of Referral*	*Employer*	*Position or Type or Referral*
S. Allen	3-05-80	6-17-80	FBD	Master mechanic
R. Robinson	6-19-80	7-06-80	Ram	Shreveport district 2 or 3 shifts
J. Cruse	6-09-80	7-19-80	Summit	2 or 3 shifts
T. McMurray	6-09-80	7-06-80	Ram	Shreveport dist. 2 or 3 shifts
S. Allen	3-05-80	8-01-80	Pittman	2 or 3 shifts for relief of ill employee
E. Farmer	5-15-80	9-03-80	Rimcor	2 or 3 shifts
R. Almond	7-16-80	9-02-80	Rimcor	2 or 3 shifts
D. Robertson	9-15-80	9-18-80	Gullette	2 or 3 days
F. Lively	6-16-80	9-01-80	Summit	2 or 3 shifts
E. Farmer	5-15-80	10-27-80	B & H	Shreveport dist.
C. Hilton	10-13-80	10-20-80	Stebbling	1 or 2 days
F. Lively	6-16-80	10-06-80	Halfor	1 day
G. Madden	10-01-80	11-04-80	Conle Eng.	2 or 3 shifts
R. Robinson	10-01-80	11-04-80	Ram	2 or 3 shifts
W. Kirby	3-16-81	4-29-81	Beach	2 or 3 days
M. McCarty	1-28-81	4-11	Beach	2 or 3 days for relief of ill employee
G. Russell	2-03-81	5-05-81	Beach	2 or 3 days
M. McCarty	1-28-8	5-19-81	Beach	2 or 3 days

Honey signed the referral list on February 20 and again on December 19 after his working on the FBD job in November caused his name to be removed from the referral list.

The General Counsel contends that the out-of-order referrals were discriminatory with respect to Honey, notwithstanding the fact that there was a substantial number of other individuals ahead of Honey on the referral list when the out of order referrals were made. In addition to those out of order referrals listed above, the General Counsel contends that the Respondent further discriminated against Honey when it breached its 5-day rule and failed to remove the names of John Crumley, Ray Miller, Raymond Howard, John Kavalir, Ellis Harper, and Sherman Allen when it allowed their names to remain on the out-of-work list ahead of Honey after they had worked 6 days on a job in June. In this regard, the General Counsel contends that the Respondent's change of the 5-day rule to a 6-day rule was, contrary to Hayes' testimony, a self-serving change which came about solely for the purpose of providing a defense to the instant case. Moreover, the General Counsel contends that, by making the change, the Respondent independently committed an independent violation of Section 8(b)(1)(A) and (2) of the Act since it constituted a change in standards for the operation of the hiring hall and that any such change which resulted in a denial of employment to an individual who utilizes the hiring hall falls within that class of discrimination which inherently encourages union membership, citing *Journeymen Pipe Fitters Local No. 392, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S. and Canada, AFL-CIO (Kaiser Engineers, Inc.)*, 252 NLRB 417 (1980).

Initially, the Respondent raised a procedural defense. It argues that the same allegations made in the instant case were made by Honey in the charge in Case 15-CB-2318 which was dismissed by the Regional Director and the dismissal was sustained by the General Counsel. Accordingly, the Respondent argues, the matter should be treated as finally adjudicated under the rationale of *Jefferson Chemical Company, Inc.*, 200 NLRB 992 (1972), and the complaint herein dismissed.

With respect to the litigated facts, the Respondent's position is that the referral procedures it utilized were consistent with those utilized in the past. They were not designed to, and did not, discriminate against Honey. With respect to the 5-day rule change, the Respondent Union argues that the rule was not implemented to deny Honey or any other applicant work opportunities but, on the contrary, to give everyone a better chance on work opportunities. The Respondent further contends that the record does not establish that Honey lost any job opportunities because of the change to the 6-day rule.

Finally, the Union contends that the absence of discrimination against Honey is shown by its offer of referral to Honey in September to a job outside of the Monroe district which he rejected, its offer to him and

his acceptance of a referral to a job in November, and subsequently its offer of a referral to Honey, again rejected, to a 6-day job in June 1981, a few days prior to the hearing.

C. *Conclusions*

The Respondent's procedural defense lends itself to quick resolution. In *Jefferson Chemical, supra*, the Board dismissed a complaint that was predicated on a theory disavowed by the General Counsel in an earlier unfair labor practice proceeding against the same Respondent. The Board majority in *Jefferson Chemical* accepted the Administrative Law Judge's conclusion in dismissing the complaint that it would be "unfair to Respondent to permit" the General Counsel to use his "own failure to conduct a complete investigation as an excuse for permitting him to litigate an issue he was unwilling to litigate" at the preceding hearing. The *Jefferson Chemical* case is clearly distinguishable for that case involved the litigation of a prior charge, not the dismissal of such a charge without litigation. A regional director's dismissal of a charge is not *res judicata* to those matters encompassed in the charge. Accordingly, I find no merit to the Respondent's procedural argument in this regard. I also find no merit to the further contention of the Respondent that the General Counsel's amendment of the complaint prior to the hearing to expand the scope of the complaint and the allegations of discrimination against Honey deprived the Respondent of due process. It is well established that a complaint is not confined to the exact allegations of the charge, and so long as the complaint alleges matter closely related to the charge or the controversy which produced the charge, it is sufficient. *Fant Milling Co.*, 360 U.S. 301 (1959).

With respect to the remaining issues, it is well established that a labor organization which operates a hiring hall under a contract or other arrangement with an employer as the sole source of employees to that employer is obligated to refer applicants without regard to their union membership or loyalty. *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry Local Union No. 137 (Hames Construction and Equipment Co., Inc.)*, 207 NLRB 359 (1973); *International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forger and Helpers Local Lodge No. 169, AFL-CIO (Riley Stoker Corporation)*, 209 NLRB 140 (1975). Moreover, under the principle of *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962), enforcement denied 326 F.2d 172 (2d Cir. 1963), a labor organization which is the statutory collective-bargaining representative of employees utilizing its exclusive hiring hall is barred from using unfair, irrelevant, or invidious considerations in making referrals of such employees. *Journeymen Pipefitters Local No. 392, supra.*

It has been held that, under an exclusive hiring hall arrangement or agreement, a labor organization must conform with and apply lawful contractual standards in the operation of the hall and any departure from such standards which results in a denial of employment to an applicant for referral falls within that class of discrimination which inherently encourages union membership. *Local Union No. 725 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Powers Regulator Company), 225 NLRB 138 (1976); International Brotherhood of Electrical Workers, Local 592 (United Engineers Construction Co.)*, 223 NLRB 899, 901 (1976), and cases cited therein. Thus, departure from clear and unambiguous standards in refusing to refer an employee who apparently qualifies for referral under the standards establishes a *prima facie* violation of Section 8(b)(1)(A) and (2) of the Act which must be rebutted by the union by establishing that the action was necessary for the effective performance of its function of representing its constituency. See *International Association of Heat and Frost Insulators & Asbestos Workers, AFL-CIO, Local 22 (Rosendahl, Inc.)*, 212 NLRB 913 (1974). The Board has also held that a union violates Section 8(b)(1)(A) of the Act in the operation of an exclusive referral system in the building and construction industry where it arbitrarily and discriminatorily refuses to refer an individual to a supervisory position when the referral system is regarded as including such position. See *United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry, Local 137, supra; International Union of Operating Engineers, Local 18, AFL-CIO (C. F. Braun Company)*, 205 NLRB 901 (1973).

Turning first to the General Counsel's contention that the Union discriminated against Honey by failing to consider him for referral to the master mechanic position to which Sherman Allen was referred on June 12, even though Honey was on the list ahead of Allen, it is clear from Honey's credited testimony that in 1978 Hayes threatened Honey that he would never be referred to a master mechanic position again as long as Hayes was business agent. That threat was remote to the June failure to refer Honey. Nevertheless, the continued animosity against Honey was shown by Hayes' reminder to Honey in late May that he was going to make him pay for their 1978 dispute. Thus, a strong *prima facie* case was established by the General Counsel that the failure to consider or refer Honey was based on discriminatory considerations. This conclusion is buttressed by the fact that Honey had previously served FBD as a master mechanic with no problems and was presumably well qualified for the position.

The Respondent failed to rebut the General Counsel's case by any explanation why Allen was selected over Honey or, conversely, why Honey was rejected. Under these circumstances, the conclusion that Honey was a victim of discrimination is required. That other individuals on the referral list may have been qualified for the master mechanic position does not preclude a conclusion of discrimination against Honey for discrimination against such others was not charged or litigated.

That the position of master mechanic was regarded as one falling within the referral system is shown here by the Respondent's initial dispute between Honey and Hayes in 1978 which was rooted in Honey's not having been referred to the job as a master mechanic. The basis for Hayes' dispute with Honey was well known to other employees who themselves testified of Hayes' threats to retaliate against Honey because of his refusal to "step

down" from the master mechanic job. In these circumstances, the Respondent's discrimination against Honey can be reasonably concluded to have an impact on other employees with the resulting consequence of restraint and coercion on them with respect to their Section 7 rights. Accordingly, I conclude that by failing to refer Honey to the master mechanic job to which Allen was referred in June, the Respondent violated Section 8(b)(1)(A) of the Act. *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local No. 137, supra.*

With respect to the General Counsel's contention that the Respondent discriminated against Honey by failing to refer him to 1- to 3-day jobs,[11] out of district referrals, and referrals to jobs as temporary replacements, it is quite clear that the Respondent made 17 such referrals in apparent disregard of Honey's superior position on the out-of-work list. Hayes' testimony establishes, and I conclude, that Hayes did not in practice utilize the out-of-work list for out-of-district referrals or for referrals to temporarily replace ill employees. Moreover, I have already concluded that Hayes did not consider himself bound to utilize the out-of-work list on the 1- to 3-day jobs. Indeed, the referral procedure provides as much. However, I have also found that the record does not establish that in practice Hayes offered the 1- to 3-day jobs to "qualified applicants who are present in the hall" as also required under the referral procedure. I, therefore, conclude that Hayes exercised unfettered discretion in making referrals to these jobs.

Unquestionably, Hayes' wide latitude in making referrals to the short-duration jobs, the out-of-district jobs, and the replacement jobs lends itself to abuse and arbitrariness under which discrimination could easily arise. See *Operating Engineers, Local 406, supra.* While this procedure creates suspicion of discrimination against Honey, more must be shown to establish the actuality of discrimination. A *prima facie* case of discrimination against Honey is established by the fact that Honey, prior to September 22, or at any time prior to the time charges were filed, was not offered referral to any position while at the same time he was threatened by Hayes that he was in effect retaliating against Honey because of their prior dispute over the master mechanic position on the Erco job in 1978. The Union could only rebut this *prima facie* case by establishing that those persons referred in preference to Honey were selected for some legitimate reason such as their presence in the hall at the time of the referral as required under the referral procedures. This it did not do. In only one instance did Hayes' testimony suggest that a selection for referral to a short-term job was based on the presence of the referred individual in the union hall at the time of the referral. Thus, Hayes testified with respect to the referral of Frank Lively on September 1, 1980, that it was "a possibility" that he was in the hall when the request for the referral came in. The expression of the possibility does not establish the fact. There was no suggestion of the criteria used by Hayes in selecting referrals for out-of-district jobs and replacement jobs.

Considering the foregoing, in light of Hayes' threat to Honey, I must conclude that the failure to offer Honey referral to any of the short-term jobs including those out of district or for replacement of ill employees was by specific design and in keeping with Hayes' threat to retaliate against Honey. In this regard, the case is distinguishable from *Operating Engineers Local 406, supra,* on which the Respondent would heavily rely in its defense. There, while the discretion utilized in making referrals created a suspicion of discrimination, there was no independent evidence there that the alleged discriminatees to a greater extent than other job applicants were the objects of unequal treatment. The absence of referral of Honey to short-term jobs subsequent to June 17 coupled with Hayes' threats against Honey considered in light of Hayes practice of exercising unfettered discretion in such referrals clearly establish Honey as an object of unequal treatment.

It is true that Honey was offered a referral to an out-of-district job on September 22 and rejected the job. However, such referral appears to have been more responsive to the filing of the charge herein than a sincere desire to provide nondiscriminatory treatment. Examination of the job and the offer tends to support this conclusion. Thus, the job offered was a 6-day job. Honey rejected the job on the premise that it would have caused him to lose his position on the out-of-work list under the 5-day rule, discussed *infra,* which, to Honey's knowledge, was in effect at the time. Although the record does not indicate whether Honey related the basis of his refusal to Hayes, Hayes could have anticipated that Honey would have rejected it since Hayes failed to disabuse Honey of the notion that the 5-day rule was still in effect and that the 6-day jobs would result in his being stricken from the referral list. At this point in time there had been no announcement of any change in the 5-day rule.

The other jobs offered to Honey also fail to establish the absence of discrimination generally against him in the operation of the hiring hall. Thus, while Honey was offered a job of some 26 days in duration on November 12, it was an undesirable job from the standpoint of the working conditions in that he was required to work in a carbon black fire which he described as being harder "on your lungs and harder on your health." Indeed, the job was so distasteful that notwithstanding his need for a job, he advised Hayes never to refer him to such a job again. Finally, the last job offered to Honey was under circumstances that created substantial doubt as to the sincerity of the offer. Thus, on June 9, 1981, Honey was offered a job which he rejected because of the advent of the hearing and his belief that he would be required to spend substantial amounts of time attending the hearing. Moreover, upon explaining this basis for rejecting the offer, Hayes did not advise Honey that even if he were to accept the referral, he could take time off to attend the hearing without losing his job.

[11] At one point in his brief the General Counsel presented an alternative argument that the referral rule allowing referral to 1- to 3-day jobs without regard to the referral list was in itself unlawful. The complaint contained no allegation in this regard and no such theory was advanced at the hearing. I do not deem the issue sufficiently litigated for decision, and in any event such a decision is unnecessary in light of my findings herein. Accordingly, I make no findings on this argument.

Considering all of the foregoing and particularly Hayes' animosity toward Honey based on unlawful considerations, i.e., his disobedience to Hayes in 1978, I am persuaded that the General Counsel has established a *prima facie* case that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act in failing to consider and refer Honey to the short-term jobs, and the Union has failed to successfully rebut that case. In making this conclusion, I again recognize that there was a substantial number of other individuals listed ahead of Honey on the out-of-work list at the time of the short-term referrals. Nevertheless, discrimination against such higher listed individuals was not the subject of litigation herein and cannot bear upon the conclusion of discrimination against Honey. *Operating Engineers, Local 406, supra.*

With respect to the implementation of the 6-day rule, I concur in the argument of the General Counsel that the rule was changed in response to Honey's charge herein and the discovery of the Board's investigator, related to the Respondent in September, that there was a breach of the 5-day rule in June. It is clear that there was no documentary evidence of a change in the 5-day rule until after the original complaint herein issued. Moreover, it is undisputed that the Union had inexplicably maintained the posting of the 5-day rule at the hall as late as October and long after Hayes' testimony has it that the 5-day rule was changed to 6 days in mid-1978. Also convincing as to the absence of a 6-day rule prior to October is that credible testimony of union members and referral applicants William Caldwell, Pat Tullos, Owen Cobb, and Honey, all called as witnesses by the General Counsel who testified to the effect that they were not aware of any changes in the 5-day rule until at least the posting of the notice regarding the change in October. Hayes himself admitted that the rule change was never generally announced to the membership or explained at a union meeting. His testimony about advising hiring hall users of the change was vague, uncorroborated, and unpersuasive as was his assertion that the rule was changed in response to the chronically poor work situation in the Monroe-Alexanderia area. Finally, although the Respondent contended that it consistently followed the 6-day rule since it was implemented in mid-1978, there was no documentary evidence submitted of referrals for 6-day jobs without loss of place on the referral list at any time prior to those referrals in June which the General Counsel argues were discriminatory with respect to Honey. Accordingly, I reject as incredible Hayes' testimony that the 6-day rule was implemented in 1978. On the contrary I conclude it was, as the General Counsel argues, a contrived defense to explain an obvious breach of an established rule; i.e., the retention of the out-of-work list after June 23 of the names of referral applicants[12] who had been referred to jobs of 6-day duration on June 17.

Having concluded that the 6-day rule was a contrived defense, the fact remains that the assertion of the defense nevertheless establishes the actual change in the rule. I am not persuaded, however, that the rule was changed or implemented with the intent of affecting discrimination against Honey. The record establishes that only one of the six individuals who was referred out in June for 6 days and whose name remained on the list thereafter, John Crumley, was subsequently referred to another job in accordance with his original date of signing the referral list, a date earlier than Honey's February 20 sign on date.[13] Honey was only one of some 30 names shown on the August referral list[14] who was affected by the Respondent's failure to remove Crumley's name from the referral list. With so many names ahead of Honey there would have been no need for Respondent to implement the 6-day rule in order to preclude Honey's referral. Accordingly, I conclude that the implementation of the 6-day rule was not specifically designed to discriminate against Honey, and I find no violation of the Act in this regard.

In his brief, the General Counsel argues for the first time, that the Respondent independently violated Section 8(b)(1)(A) and (2) of the Act by changing the 5-day rule without advising all applicants or users of the hall. Thus, the General Counsel appears to contend that the change was a breach of the Union's duty of fair representation under *Miranda Fuel Company, Inc., supra.* In support of that proposition, the General Counsel cites *Journeymen Pipe Fitters, Local No. 392, supra.*

At the hearing the General Counsel did not enunicate the *Miranda* theory now urged nor did the complaint specifically set forth a failure to fairly represent allegation. Nevertheless, the complaint alleged the illegality of the Respondent's retention on the referral list of the names of employees who have been referred to jobs for more than 5 days. Accordingly, the facts surrounding the implementation of the 6-day rule were fully litigated, and the Respondent's brief argued the legality of the implementation of the 6-day rule. I conclude that the issue is ripe for decision.

In *Journeymen Pipe Fitters Local No. 392, supra*, the union's collective-bargaining agreement with an employer association provided for the operation of an exclusive hiring hall utilizing an out-of-work list from which referrals were to be made on a first-in, first-out basis. In practice the union did not maintain an "out of work list," and did not follow a first-in, first-out procedure in making referrals. Moreover, the union never notified the job applicants that it was departing in any manner from the referral system established by collective-bargaining agreement. The Administrative Law Judge concluded, with Board approval, citing *Local No. 324, International Oper-*

[12] The individuals so referred were John Crumley, Ray Miller, Raymond Howard, John Kavalir, Elvis Harper, and Sherman Allen. Allen's referral on this occasion was as a master mechanic, a matter already discussed herein.

[13] While the General Counsel argues that others of those referred with Crumley on June 17 were also subsequently referred ahead of Honey to other jobs since their names were subsequently removed from the referral list, the record does not substantiate such later referrals. Since there are reasons other than referral which would explain the removal of names from the list under hiring procedures, and because of referral slips which customarily were issued by the Union in making referrals were not shown to have been issued to those individuals no inference is warranted that the removal of names from the referral list was a result of a job referral. While Allen, the record shows, was referred again on August 1, the referral was to a short-term job and not based upon his standing on the referral list.

[14] G.C. Exh. 20.

ating Engineers, AFL-CIO (Michigan Chapter, Association General Contractors of America, Inc.), 226 NLRB 587 (1976), and *Miranda Fuel, supra*, that the union's failure to so inform the users of the hiring hall of its departure from contractually provided procedures was arbitrary and in breach of its duty to keep the job applicants informed and to represent them fairly. Moreover, citing the *National Association of Heat and Frost Insulators & Asbestos Workers, AFL-CIO, Local 22, supra*, the Administrative Law Judge concluded that any departure from established contractual standards in the administration of an exclusive hiring hall which results in a denial of employment to a member falls within that class of discrimination which inherently encourages union membership thereby violating Section 8(b)(2) and (1)(A) of the Act.

In the instant case the applicable collective-bargaining agreement did not specifically outline hiring hall procedures and provided only that selection of applicants for referral would be on a nondiscriminatory basis. Unlike in the cases cited above, the change in the hiring hall procedures here did not breach an established contractual standard for the contract did not specify the standards other than that the hiring hall be operated on a nondiscriminatory basis. Here, however, the Respondent's hiring procedures, although posted at its union hall, were self-established. There was no contractual limitation on changing the procedures or rules on referral.

The record establishes that the Union first implemented its 6-day rule on and after June 22 when it allowed John Crumley's name to remain on the out-of-work list notwithstanding the fact that he had been referred to a job which had lasted longer than 5 days. The failure to remove Crumley's name affected the standing of those below him on the list, but there was no showing that it resulted in a specific denial in employment to Honey. Moreover, and while the rule change was clearly arbitrary, it did not appear to discriminate against one group of referral applicants over another. Finally, it did not clearly breach an established contractual standard. Accordingly, I believe *Journeymen Pipe Fitters, Local No. 392, supra*, and the cases cited therein and noted above are distinguishable. I therefore find no breach of the Union's duty of fair representation in violation of Section 8(b)(1)(A) or a discriminatory denial of employment in violation of Section 8(b)(1)(A) and (2) flowing from the rule change.

CONCLUSIONS OF LAW

1. Ford, Bacon & Davis Construction Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Operating Engineers Local 406, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union, FBD, and other employers have been parties to a collective-bargaining agreement whereby the Union operates an exclusive hiring hall and referral system for the referral of employees by the Respondent to work for FBD and such other employers.

4. By the acts of Business Agent C. W. Hayes in informing Lamar Honey that he was the object of retribution in referral for having previously opposed the desires of the Respondent, the Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. By failing to consider for referral and failing to refer Lamar Honey to an available position with FBD on June 17, 1980, thereby causing FBD to discriminate against Honey, the Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

6. By failing to consider for referral and by failing to refer Lamar Honey to available short-term positions with various employers as set forth above, the Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

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

THE REMEDY

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

I have found that the Respondent unlawfully denied Lamar Honey consideration for referral, and referral to, short-term jobs, out-of-district jobs, and a master mechanic position. To remedy these violations of the Act, it is recommended that Honey be made whole of any loss of earnings he may have suffered by reason of the discrimination against him. Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[15]

Citing *Iron Workers Local 118, International Association of Bridge and Structural Iron Workers, AFL-CIO (Pittsburgh Des Moines Steel Company)*, 257 NLRB 564 (1981), the General Counsel seeks a remedy requiring the Union to notify those employers with whom Honey was denied employment, in writing, with copies furnished to Honey, that the Union had no objections to Honey's hiring or employment. Moreover, on the same case authority, the General Counsel seeks an order that the Union affirmatively request the employers that they hire Honey for that employment which he would have had were it not for the Union's unlawful conduct. In *Iron Workers Local 118*, the Board in remedying a violation of a failure to refer a discriminatee to a single employer did require the union to notify the employer involved that it had no objections to the discriminatee's employment and affirmatively request that he be hired. I find such a remedy inappropriate here, however, where the discrimination found involved short-term or temporary jobs.[16]

As urged by the General Counsel, and in view of the seriousness of the unfair labor practices herein considered in light of its prior violations of the Act in operation of its hiring hall found by the Board in *Internation-*

[15] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[16] As set out in the Decision, *supra*, Honey was denied referral to 17 short-term or temporary jobs none of which were shown to have lasted over 3 days. The master mechanic position to which he was denied referral the record shows lasted no more than 6 days.

al Union of Operating Engineers Local 406, supra, I shall recommend that the Board adopt a broad order requiring the Respondent to cease and desist from infringing in any manner upon employee rights guaranteed by Section 7 of the Act.[17]

[Recommended Order omitted from publication.]

[17] *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).