International Brotherhood of Teamsters Local 492 (Fire and Ice Productions, Inc.) *and* Bill Kelman.
Cases 28–CB–207136

May 8, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On June 24, 2019, Administrative Law Judge Amita Baman Tracy issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answer, and the General Counsel filed a reply. The Charging Party filed exceptions with supporting arguments.[1] The Respondent filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply.

The National Labor Relations 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,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. May 8, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Rodolfo Martinez, Esq., for the General Counsel.
Shane Youtz, Esq., for the Respondent.

DECISION

INTRODUCTION

AMITA BAMAN TRACY, Administrative Law Judge. This case involves allegations by the General Counsel for the National Labor Relations Board (the Board) that the International Brotherhood of Teamsters Local 492 (the Union or Local 492 or Respondent) operates a de facto exclusive hiring hall for its show and movie production work in the state of New Mexico and maintained and enforced a rule which has no representational function. Furthermore, the General Counsel alleges that the Union failed to effectively inform member and nonmember hiring hall users of this rule and the consequences of violating the rule. This rule, known as the "double-roster rule," states:

> Any person on another Teamster roster in the industry is ineligible to be placed or to maintain roster status in New Mexico.

As discussed herein, I find that the Union's double-roster rule is lawful. Furthermore, I find that the Union did not otherwise violate the National Labor Relations Act (the Act) as alleged.

STATEMENT OF THE CASE

Bill Kelman, an individual (Kelman or the Charging Party) filed the original charge on September 29, 2017.[1] The Regional Director issued a complaint and notice of hearing on October 24, 2018.[2] The Union filed a timely answer denying all material

[1] The Charging Party also filed a motion for reconsideration, rehearing, and reopening of the record. We deny this motion because the Charging Party has not demonstrated extraordinary circumstances as required by Sec. 102.48(c) of the Board's Rules and Regulations.

[2] The Charging Party 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.

We also reject the Charging Party's substantive arguments that are beyond the scope of the General Counsel's complaint. It is well settled that a charging party cannot enlarge upon or change the General Counsel's theory of a case. *Kimtruss Corp.*, 305 NLRB 710, 711 (1991).

[3] In adopting the judge's finding that "a[n] exclusive hiring hall may be created by written or oral agreement or by practice," we do not rely on her citation to *Carpenters Local 1507 (Perry Olsen Drywall)*, 358 NLRB 1 (2012), which was issued by a panel subsequently found invalid by the Supreme Court in *NLRB v. Noel Canning*, 573 U.S. 513 (2014). Instead, we rely on *Plumbers Local 198 (Stone & Webster)*, 319 NLRB 609, 611–612 (1995).

[1] All dates hereinafter are in 2017, unless otherwise noted.

[2] General Counsel moved to amend complaint paragraphs 5(a) and 5(c) at the outset of the hearing (General Counsel's Exhibit (GC Exh.) 2). The Union opposed the amendment of paragraph 5(a), alleging that the General Counsel's theory of the case had changed such that the Union was identified as a de facto exclusive hiring hall rather than a non-exclusive hiring hall as originally pled. At the hearing, I granted the General Counsel's motion to amend both paragraphs of the complaint. As I explained during the hearing, I determined that the Union had received enough notice of the General Counsel's intention to amend the complaint (on January 16 and 25, 2019), and thus, permitted the amendment but granted the Union additional time, if needed, to prepare its response to the amendment, specifically the type of hiring hall at issue (Transcript (Tr.) 10–11). The Union did not request any additional time.

allegations.[3] A hearing was held on January 29, 2019, in Albuquerque, New Mexico.

The amended complaint alleges the Union violated Section 8(b)(1)(A) of the Act on or about August 25, by enforcing an unlawful rule, thereby removing Kelman from a group 2 seniority roster and placing him on a group 6 seniority roster. Moreover, the complaint alleges the Union failed to effectively inform its member and nonmember hiring hall users of its rule and the consequences of violating the rule. The Union denies that it operates a de facto exclusive hiring hall, but instead maintains a referral list for show and movie production work. The Union also denies it violated the Act in any respect even assuming it operates a de facto exclusive hiring hall. On the entire record,[4] including my observation of the demeanor of the witnesses,[5] and after considering the briefs filed by the General Counsel and Union,[6] I make the following

FINDINGS OF FACTS

I. JURISDICTION

At all material times, Fire and Ice Productions, Inc. (the Employer) has been a corporation with offices and places of business throughout the United States, including an office and place of business in Park City, Utah, and has been engaged in film production. During the 12-month period ending September 29, the Employer, in conducting its business operations, purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Utah. The Union admits, and I find, that Fire and Ice Productions, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

During all material times, the Union admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. The Union's Hiring Hall Procedures

The Union operates a hiring hall which makes available and promotes a work force of drivers and wranglers who work on the set of shows and movies for production companies filming in New Mexico. These individuals are hired by production companies after the Union and production companies enter into Memorandums of Agreement (MOA) per show or film. Thereafter, the production company uses the Union's Industry Experience Roster, which is comprised of groupings of individuals based on factors set forth in writing by the Union, to hire drivers and wranglers. In addition, to the MOAs and union procedures, the terms and conditions of employment for those hired by the production companies via the Union's hiring hall are set forth in the collective-bargaining agreement (CBA), dated August 1, 2015, between Producer, a multiemployer bargaining group (which consists of numerous production, entertainment and film companies) and the Studio Transportation Drivers, Local #399 (Local 399) (Jt. Exh. 1).[7]

1. The Union's Industry Experience Roster

Melissa Malcom (Malcom) became the Union's business agent in January 2017 (Tr. 30, 118).[8] Malcom's duties include ensuring the MOAs with the various production companies are signed and the production companies are abiding by the MOAs. She also ensures that the Union's bylaws are followed along with

[3] The Union generally alleges in its answer that the complaint is untimely, but the Union set forth no specific allegations and did not litigate this issue during the hearing. As such, I find that the Union has waived this defense. See *United Government Security Officers of America International*, 367 NLRB No. 5, slip op. at 1 fn. 1 (2018). Similarly, the Union alleged in its answer that the allegations should be referred to the Union's internal dispute resolution procedure. However, the Union did not set forth any arguments to support this claim, and thus, I will not address this defense.

[4] The transcripts in this case are generally accurate, but I make the following corrections to the record: Tr. 5, Line (L.) 8: "Anita" should be "Amita"; Tr. 54, L. 17: "it's" should be "is."

[5] Citations to the record are included to aid review, and not exhaustive or exclusive. In making my findings regarding the credible evidence, including the credibility of witnesses, I considered the testimonial demeanor of such witnesses, the content of the testimony and the inherent probabilities based on the record as a whole. In certain instances, I may have credited some but not all, of what the witnesses said. "Nothing is more common in all kinds of judicial decisions than to believe some and not all" of the testimony of a witness. *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (951). See also *J. Shaw Associates, LLC*, 349 NLRB 939, 939–940 (2007). This is particularly the case where the credited portions of the witness' testimony are "consistent with the testimony of credited witnesses or with documentary evidence," constitute an admission against interest, or are relied upon by the party against which a particular issue is being resolved. *Upper Great Lakes Pilots*, 311 NLRB 131, fn. 2 (1993). In addition, I have carefully considered the testimony in contradiction to my factual findings, but I have discredited such testimony, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and untrustworthy. My credibility findings are reflected within the Findings of Facts.

[6] Additional abbreviations used in this decision are as follows: "R. Exh." for Respondent's exhibit; "GC Br." for the General Counsel's posthearing brief; and "R. Br." for Respondent's posthearing brief.

[7] This CBA is also known as "the Black Book" (Tr. 14, 46). Paragraph 30 of the CBA, titled "Distant Location Conditions and Wages" states:

> When unit working on distant locations in the thirteen (13) western states (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming) and the western Canadian provinces of British Columbia, Alberta and Saskatchewan [… .] The parties agree that the aggregate rate for wages and fringes in the thirteen (13) western states shall equate to the aggregate rate for wages and fringes as stated herein [… .] In hiring personnel at the location, the Producer will use its best efforts to notify the business agent for the Local Union involved at least seventy-two (72) hours in advance and will consult with said business agent regarding the selection of qualified local hires provided the Producer will make the final decision.

(Jt. Exh. 1.)

[8] Respondent admits, and I find that during the relevant time period, Malcom is an agent of Respondent within the meaning of Sec. 2(13) of the Act.

handling grievances and office work (Tr. 55, 116, 119–120, 123–124). Malcom confirms that hiring hall users maintain current and appropriate licenses, updates hiring hall users contact information and handles all paperwork (Tr. 55–56, 119–120, 134). Malcom testified that the Union maintains a referral list and believed that the Union is not a hiring hall since the production companies make the final decision as to whom to hire (Tr. 60, 120–121, 133).[9]

Effective January 1, 2016 (Jt. Exh. 2), the Union's Industry Experience Roster and out-of-work registration procedures set forth the rules and qualification for individuals to register for work with the Union, including the groupings of persons on the hiring roster. These January 1, 2016 procedures were mailed to all active hiring hall members on November 15, 2015, including Charging Party Kelman (R. Exh. 2; Tr. 135–138, 183–184).

The Industry Experience Roster is created by grouping individuals into three categories: group 1, group 2 and group 3 (Jt. Exh. 2; Tr. 60).[10] To be in group 1, an individual need to have been on the Industry Experience Roster as of January 1, 2007, and did not need a commercial driver's license (CDL) but needed 2000 hours worked (Tr. 61; Jt. Exh. 2). After 2007, to be in group 1, the Union required the individual to have a CDL with passenger endorsement, have a valid Department of Transportation (DOT) medical card, submit a copy of their motor vehicle record (MVR), be a resident of New Mexico, and complete 5 years on the Industry Experience Roster (Jt. Exh. 2; Tr. 61). To be in group 2, an individual must maintain a CDL with passenger endorsement, have a valid DOT medical card, submit a copy of their MVR, be a resident of New Mexico, and complete 2 years on the Industry Experience Roster (Jt. Exh. 2; Tr. 62). To be in group 3, an individual must maintain a CDL with passenger endorsement, have a valid DOT medical card, submit a copy of their MVR, and be a resident of New Mexico (Jt. Exh. 2; Tr. 62). In addition, since the Union closed its "books" or stopped adding individuals to its Industry Experience Roster in July 2015, to be in group 3, an individual needed to be in that group prior to then (Tr. 62, 64). Individuals advance to a higher group after a certain number of years on the roster of the prior grouping as well as working in the industry for at least 1 calendar day per year. Within each grouping, each member has the same level of seniority (Tr. 50).

In addition to groups 1, 2 and 3 comprising the Industry Experience Roster, the Union maintains a group 6 (also known as the supplemental group) (Tr. 50, 60).[11] Group 6 consists of individuals who have not met requirements to be placed on the group 3 roster such as maintaining New Mexico residency, a CDL, and/or obtaining a 30-day permit period[12] (Tr. 63). The Union also keeps an exhausted list which consists of "casuals" who are referred when groups 1, 2, 3, and 6 are exhausted (Tr. 65). These "casuals" are nonmembers who pay a fee to the Union (Tr. 65).

As for the order of hiring, the procedures set forth in the Union's Industry Experience Roster states,

> The Local Union will inform those signatory Producers involved in the production of motion pictures in the state of New Mexico of the Industry Experience Roster and that referral will be first from Group 1, then from Group 2, then from Group 3, except that the Producer may request the Group 2 list if 5% or less of Group 1 is available and may request the Group 3 list if less than 5% or less of Group 2 is available. Additionally, the Producer may request persons by name off the Industry Experience Roster because of their special experience, skill and qualifications necessary to operate specialized equipment.

(Jt. Exh. 2.)

2. The MOAs between the Union and Production Companies

In addition to the Union's procedures and applicable CBA, the MOAs signed between the Union and production companies also covers the terms and conditions of employment of drivers and wranglers during each show for which the production company seeks to hire (Jt. Exh. 4; Tr. 31, 46, 113–114).[13] Generally, most production companies sign MOAs with the Union when seeking to employ drivers and wranglers in New Mexico for a show or movie (Tr. 33). Through these MOAs, the production companies agree to hire available drivers and wranglers from the Union's Industry Experience Roster, but it is agreed that the production companies will make the final decision on who they wish to hire (Jt. Exh. 4; Tr. 59, 122). The MOAs state:

> 1. The Company agrees to hire available drivers and wranglers from Teamsters Local 492 Industry Experience Roster as follows:
> (a) All drivers and wranglers, so long as qualified, will be hired from the group 1 list on the Industry Experience Roster. When 95% of the group 1 drivers listed are employed/unavailable, or there are no qualified drivers or wranglers then the Company may hire from those drivers or wrangles listed in group 2.
> (b) When 95% of the group 2 drivers listed are employed/unavailable, or there are no qualified drivers or wranglers then the Company may hire from those drivers or wranglers listed in group 3.
> (c) In the event there are insufficient available, qualified persons from such related job classifications grouping who are in the respective Industry grouping 1, 2, 3, Supplemental (permit) group, or Exhausted List to meet the employment requirements of the Producer in such respective related job classifications grouping, then the Producer may secure employees from any source.

[9] Malcom testified in a clear and logical manner, and I found her overall testimony to be credible except on a few minor issues which I will address. Malcom never wavered under cross-examination and testified consistently with corroboration from documentary evidence. Unlike Kelman, Malcom provided specific details regarding her conversations with Kelman and her recollection of events in July and August 2017.

[10] At the time of the hearing, 142 individuals were on the Union's group 1 roster, 45 individuals on the group 2 roster, and 8 individuals on the group 3 roster (Tr. 166–167).

[11] All individuals in groups 1, 2, 3, and 6 pay dues to the Union (Tr. 62, 64).

[12] A 30-day permit period is when a member works for 30 days after obtaining a CDL (Tr. 63).

[13] The MOAs presented at the hearing were nearly identical except for the names of the production companies and shows (Jt. Exh. 4).

> (d) The Company agrees to notify the Union in advance or, at the latest, at the time of hire of any Teamster hired in the following positions to ensure they are in good standing: Insert Car Drivers and Animal Trainers/Handlers. This does not limit the company from hiring who they wish to hire, only to let us know that they are hiring them.
> (e) The Union will refer, through its electronic call board, the appropriate list of available drivers and wranglers, not individuals. The Company retains the right to make final decisions as to hiring any individual driver or wrangler from the respective group List supplied by the Local Union in accordance with subsections (a), (b) and (c) above.

(Jt. Exh. 4; Tr. 66-69, 121–122, 125).[14] The production company makes its request in written form for any lower grouping list such as group 2 and 3 (Tr. 66–67). But on occasion members from another Teamster union may work in New Mexico by paying dobie dues (or service fee) only (Tr. 117, 121–122).[15] Malcom testified, in relevant part as follows,

> Q. And isn't it true that under the memorandums of agreement that the Union has with production companies, that production companies cannot hire outside the grouping system unless the driver they want to hire is driving special equipment, or driving an above-the-line individual and has been requested by name?
> A. Yes.
> Q. And isn't it true that transportation captains can ask for people by name all they want, but if you're not into that particular grouping for that person, they can't hire that driver unless the driver falls within either special equipment or personal driver exceptions?
> A. Yes.
> Q. And the production companies are required to use the Union's grouping system if they sign a memorandum of agreement, correct?
> A. Yes.

(Tr. 68–69.)

Malcom also testified that companies may hire workers not on the Union's Industry Experience Roster but would then have to pay a fee. Malcom testified,

> Q. And is it in that experience true, like yourself, that sometimes they hire off the street or hire not using the referral list?
> A. Yes.
> Q. Can you give us some examples?
> A. I can. We have a low-budget agreement that says they can hire—if they want to hire anybody that they want, then all that's required is that they pay us a service fee during their time of employment. They can seek employees by whatever means they choose. We had a show that came in for about two weeks, and they brought—they hired a dispatcher that was not one of my members. We charged her a service fee. I can give you—we had—there's a mechanic on a show. We didn't have any mechanics. They hired him off the street. After he was hired, we put him on our list, on our exhausted list.

(Tr. 121–122.)[16] In addition, Walter Maestas (Maestas), the Union's secretary treasurer, testified that the Union could file a grievance and seek liquidated damages if a production company who has a contract with the Union hires workers improperly (i.e., not through the Union's lists) (Tr. 32–33).[17] Maestas also testified that generally production companies do not circumvent the Union when hiring drivers but there are instances where drivers are "hired off the street" (Tr. 33).[18]

B. The Union's Removal of Kelman from its Industry Experience Roster Group 2

The Union's procedures, effective January 1, 2016, contain the following rule (double-roster rule):

> 3) […] Any person on another Teamster roster in the industry is ineligible to be placed or to maintain roster status in New Mexico. […]

(Jt. Exh. 2.)[19] This rule means that individuals on the Union's Industry Experience Roster may not be on the rosters of any other Teamster local but those on the Union's Industry Experience Roster may still work outside of New Mexico at other Teamster locals by only paying dobie dues (Tr. 69). Also, this rule means that Teamster members from other locals may not be added to the Union's Industry Experience Roster if they are rostered with any other Teamster local.

The origins of the double-roster rule date back to 2015. In 2015 members of the Union's film and movie unit raised

[14] The Union maintains an electronic call board where any driver or wrangler who wants to work makes themselves available through the electronic call board (Tr. 60, 67). When a production company seeks to hire, the Union gives the production company the ability to view the electronic system, see the groups by seniority available for work and the job classifications (drivers, dispatchers, mechanics, and wranglers), and then the production company picks who they want (Tr. 60, 66–68, 116).

[15] Malcom defined dobie dues as "a service fee that a union member would pay to another local jurisdiction if they went into their jurisdiction to work" (Tr. 156–157). The union member is "visiting" the jurisdiction, and not seeking to join that union by submitting qualification forms for purposes of placement on a roster (Tr. 157).

[16] Later, when testifying on direct examination, Malcom seemingly contradicted her prior testimony by stating that companies could hire anyone regardless of the MOAs (Tr. 133). I do not credit this portion of her testimony because it is not supported by a strict reading of the MOAs where the company agrees to hire workers from the Union's lists, and only after exhausting such lists may the company hire from any "source" (Jt. Exh. 4). Her testimony is also refuted by Maestas who stated that production companies must abide by the agreed upon MOAs or face a grievance from the Union. In addition, Malcom's definition of the term "exclusive" is not supported by the law (Tr. 132–133). Much of her responses were premised on a misunderstanding of the term "exclusive" hiring hall.

[17] Respondent admits, and I find that during the relevant time period Maestas is an agent of Respondent within the meaning of Section 2(13) of the Act.

[18] I find Maestas' testimony to be credible as he testified honestly, assertively, provided details to conversations he had with Kelman, and had knowledge of the general hiring practices between the production companies and the Union's Industry Experience Roster. Moreover, his testimony was not contradicted by any other evidence.

[19] The term "roster," although not defined but as used in this hiring hall context, indicates that an individual is on a list based on certain qualifications to be hired. The terms "roster" and "list" can be interchanged.

concerns about not being hired for in-state work while Teamster members from other states were coming to New Mexico for work as well as continuing to work in their home states (Tr. 188). The Union members found it unfair to lose work to those coming from out-of-state while they were New Mexico residents who had worked in the movie industry for many years (Tr. 188–189). By being in group 1 on multiple Teamster's rosters, individuals from other states would come into New Mexico for work when work was not available in their home state thereby leaving the Union's New Mexico residents without jobs (Tr. 189).

Warren (Trey) E. White III (White), the Union's recording secretary, was part of a committee established to address these complaints.[20] White testified that the Union "tighten[ed]" their residency rules (Tr. 189). In addition, the Union sent its rules to an attorney with Local 399 to get his advice (Tr. 182). Based on the attorney's advice, the Union added the double-roster rule (Tr. 139–140, 182–183). Local 399 suggested that the Union's Industry Experience Roster should be limited to motion picture work in New Mexico, performed by New Mexico residents. Local 399 also suggested that individuals be rostered and remain rostered as long as they are not on another Teamster roster in the industry which "demonstrates the individual's commitment to work exclusively in New Mexico" (R. Exh. 4).

In addition, Maestas and Malcom also testified that the double-roster rule exists to protect work in New Mexico for New Mexico residents (Tr. 49). Malcom explained that the double-roster rule helps to keep an experienced, qualified work force in New Mexico (Tr. 161). Maestas explained that if the Union did not maintain its double-roster rule, drivers and wranglers from all over the country could "flood" the grouping system such that they could be on multiple group lists, and the Union's members would likely not be able to obtain work in New Mexico. Maestas, Malcom and White stated that if Local 399 members were permitted to roster with the Union's members, the production companies would hire Local 399 members because they would be more familiar as having likely worked with them in the Los Angeles area (Tr. 51–52, 161, 189–192). Malcom and White also explained that if those on the Union's Industry Experience Roster are allowed to roster with other Teamster's locals, the Union would need to permit other Teamster individuals to roster in the Union's jurisdiction (Tr. 164, 197). White testified that the double-roster rule "completely" stopped out-of-state residents from taking jobs from the members of the Union as the out-of-state residents could no longer roster on the Union's lists (Tr. 200–202).

Kelman, a New Mexico resident and film industry driver, has been a member of the Union since 2012 when he was placed in group 3 of the Industry Experience Roster (Tr. 78).[21] In late June, Kelman sought to advance from group 3 to group 2 with the Union. Kelman completed the Union's required paperwork to support his move to group 2 and received from the Union its January 2016 procedures which included the double-roster rule; he had also received the notice of the double-roster rule in November 2015 (Tr. 93, 143–145; R. Exh. 5).[22]

Thereafter, Kelman came into the union office on or about July 12 and spoke to Malcom (Tr. 147–148). Kelman told Malcom that he had worked in many facets of the film industry and that he was offered work in another state and wanted to know when he would be eligible to move to the next group in the Union (Tr. 148). Malcom informed Kelman that he would be moved to group 2 on August 3 (Tr. 148). Malcom testified that Kelman never told her he planned to work in Utah or the type of work he would be performing; he simply told her he was going out of the state (Tr. 148).[23]

While he actively sought to move from group 3 to group 2 on the Union's Industry Experience Roster, Kelman sought industry work with Teamsters Local 222 (Local 222) in Utah (Tr. 80–81). Kelman looked for work in Utah because he had recently had hip surgery and Malcom told him that it would be "very slow" for hiring of any group other than group 1 (Tr. 82). Thus, when a work opportunity arose through Local 222 in July 2017, Kelman completed paperwork on July 18, participated in drug testing, paid a $25 fee, and sent pay stubs to support his claimed work experience (Tr. 81–82). In his paperwork for Local 222, Kelman

[20] I credit the entirety of White's testimony as he was highly credible. White testified in a conversational manner which resonated with authenticity and truth. His testimony clearly was not scripted. What I found most striking about White's testimony was when he was asked about the origination of the double-roster rule, White raised his voice with incredulity when responding to this line of questioning. He noted the irony of Kelman's complaint considering the reasons the members wanted the double-roster rule. This key portion of his testimony exemplified his credibility.

[21] I do not credit Kelman's testimony for several reasons. Kelman testified vaguely when responding to questions on both direct and cross-examination. On cross-examination, Kelman became even more evasive, defensive to the point of responding with an antagonistic rhetorical question and was not forthcoming as to his knowledge of events. Despite receiving the double-roster rule at least twice, Kelman claimed not to know of the rule's existence. Regarding his conversations with Malcom, Kelman did not provide any specific details as to what occurred but insisted, he informed her he planned to work in Utah and blamed Malcom for not explained dobie dues and rostering. I credit Malcom's testimony that Kelman never told her he planned to work in Utah for another Teamster local in the industry. In all, Kelman's testimony cannot be relied upon.

[22] Kelman testified inconsistently and not credibly regarding his knowledge of the Union's grouping categories. For example, Kelman testified that he was unaware of his grouping category with the Union as "there was no clarity" and he simply received calls to work (Tr. 79). Kelman also testified that he did not know what the terms roster or its variations meant, or how the rostering process functioned with the Union (Tr. 108). Kelman testified that he could not recall receiving the union rules. At the hearing, Kelman testified that he did not know about the Union's double-roster rule in July and August 2017 (Tr. 93). Later, however, Kelman explained that in July 2017, he understood the double-roster rule to forbid being a member of another Teamsters local (Tr. 94–95).

[23] In contrast to Malcom's testimony, Kelman stated that he had not told anyone in the Union that he planned to work in Utah until July when he spoke to Malcom (Tr. 80–81). According to Kelman, he told Malcom while speaking to her on the phone in July that he was "thinking about leaving town to go work in Utah" (Tr. 81–82). Kelman stated that he could not recall what Malcom said in response (Tr. 81). Malcom denied Kelman told her that he planned to work for the Teamster local in Utah. Based on my overall credibility determination, I credit Malcom's testimony over Kelman's.

wrote that he was not registered anywhere else (R. Exh. 1). Kelman testified that after he worked 40 hours, he would pay them dobie dues which are the service fees (Tr. 82). Local 222 placed Kelman in their highest experience roster level due to his work experience, as proven by his pay stubs (Tr. 86–90, 152).[24] Kelman would then pay working dues, rather than dobie dues or the service fee (Tr. 158–159).

On or about August 17, Malcom learned from Kelman that he had been working for Local 222 (Tr. 71–72, 148, 170). When Malcom learned that Kelman was on Local 222's roster, Malcom told Kelman he could not be on two rosters (Tr. 148–149, 156). Kelman disagreed with Malcom, claiming that he was not rostered with Local 222 (Tr. 150). Malcom told Kelman she needed to verify with Local 222's business agent that he was not rostered in Utah (Tr. 150).[25] Based on documents Malcom received from Local 222, she concluded that Kelman had been rostered with Local 222 while also being rostered with the Union (Tr. 152153).

As a result, Malcom removed Kelman from the Union's Industry Experience Roster group 2, and placed him on the supplemental or group 6 roster (Tr. 72, 84).[26] The members who are on the group 6 list are not eligible to be rostered with the Union for various reasons such as lacking a commercial driver's license or are non-residents. On August 21, Kelman emailed Malcom regarding their recent phone conversation (Jt. Exh. 5). Kelman stated that he did not roster with Local 222 in Utah in July but only paid dobie dues to qualify for work there. Malcom responded the next day, writing that the problem was that he was on two rosters thereby violating the Union's double-roster rule which states that "any person on another Teamster roster in the industry is ineligible to be placed or to maintain roster status in New Mexico" (citing to Jt. Exh. 2). Malcom confirmed that Kelman had been rostered or listed on Local 222's group A list. Malcom wrote, "We, however, can never allow one of our grouped members to take work away from other rostered movie workers in another [u]nion. I am sure if you were here and found out we let someone from Utah come here and immediately get on the group 1 list and take a job, you would not appreciate that one bit. We don't have a problem with you paying dobie dues to other locals, the issue is you were **ROSTERED AS A GROUP A in Utah,** who then dispatched you to Montana" (Jt. Exh. 5, emphasis in original). Malcom explained that Kelman falsely informed Local 222 that he was not registered with another Teamsters local and provided 7 years of payroll documentation to be placed on Local 222's group A list (See R. Exh. 1).[27] Malcom stated that the work rules must be enforced and that he had lost his group 2 roster position with the Union. The Union later sent Malcom's response to Kelman via certified letter on its letterhead (Jt. Exh. 6).

Kelman also spoke to Maestas about his removal from group 2, but Maestas told him his only recourse was to appeal the decision to the Union's executive board (Tr. 83–84). Maestas testified that he also explained to Kelman on August 29 that the prior business agent Moises Ortega (Ortega) had been criticized by the members for being "lenient" regarding the Union's rules, and thus, the Union hired Malcom as the Union's business agent who has movie industry experience and enforces the rules strictly (Tr. 39).

Thereafter in late August, Kelman sought to appeal Malcom's decision (Tr. 84). First Kelman explained to Malcom in an email that he mistakenly marked that he was not on any other roster which he thought referred to another union's roster, other than the Union. In addition, Kelman wrote that he paid dobie dues and only provided additional information to prove his experience to meet Local 222's experience requirement. Kelman wrote, "I mentioned to you I was going to try to work out of state and you said I had to pay [d]obie dues" (Jt. Exh. 7). Malcom responded, "As I have explained numerous times, this is not about "dobie dues." This is about roster placement" (Jt. Exh. 7).

Malcom responded by offering several possibilities to Kelman. She offered to waive certain fees if he wanted to transfer his membership to Local 222, and he could be on the Union's exhausted list. Malcom also offered that if Kelman did not want to transfer his membership, he could be on the Union's group 6 list while he is rostered with Local 222 (R. Exh. 7).

On September 7, Kelman appealed the decision to remove him from the Union's group 2 roster to the Union's executive board (Jt. Exh. 8). On September 15, Malcom responded via written form to Kelman's appeal to the Union's executive board; Malcom clarified that Kelman always remained a member in good standing with the Union but had violated the double-roster rule (R. Exh. 7).[28] On September 16, the executive board met and discussed Kelman's appeal (Tr. 40). On September 29, the

[24] Malcom testified about her conversation with the business agent of Local 222 regarding Kelman's roster status with the Utah Teamster's local (Tr. 151). These conversations were hearsay, uncorroborated and not relevant to the issues to be resolved in this complaint. See, e.g., *Auto Workers Local 651 (General Motors)*, 331 NLRB 479, 481 (2000) (uncorroborated testimony properly rejected as unreliable hearsay).

[25] Malcom testified that she told Kelman he could retain his group 2 status if he removed himself from the roster with Local 222, but that he refused, stating he needed to work (Tr. 150). Kelman does not recall Malcom offering this to him (Tr. 102). Regarding whether Malcom offered to permit Kelman to retain his group 2 roster status, I do not credit Malcom's testimony since proximate evidence as well as Maestas' testimony does not support her hearing testimony. Malcom's November 13 affidavit to the Board agent for this proceeding does not mention such an offer to Kelman and neither does Malcom's November 3 position statement during this investigation (Tr. 174–175). In addition, Maestas testified that Malcom had been brought in as the business agent, in part, because the prior business agent was criticized by members for not consistently enforcing the rules. Considering such context, it does not seem likely that Malcom offered to resolve Kelman's double-rostering violation. Thus, Malcom's claim that she offered Kelman to retain his group 2 roster status cannot be credited.

[26] Kelman claims he was removed from the "film department" and made a "member in bad standing" in August 2017 (Tr. 83). The evidence does not support Kelman's claim (R. Exh. 3).

[27] In response to the following question on Local 222's registration for employment form, "Are you registered elsewhere?", Kelman wrote, 'No" (R. Exh. 1; Tr. 90). Kelman claimed that Local 222's business agent knew he was a member of the Union in New Mexico, and so Kelman assumed the question asked if he was registered anywhere else *other* than the Union (Tr. 90–91).

[28] Malcom wrote, "The intent of the 492 'one roster' rules (399 has these same rules) is to prevent someone from being able to cherry pick work in jurisdictions all over the country causing true "local members" to lose out on work in their home jurisdiction" (R. Exh. 7).

Union responded to Kelman's appeal by sending a letter to all union members (Jt. Exh. 9; Tr. 73). The Union reaffirmed its rule that no rostered or grouped persons may be placed on another Teamster roster, and that this rule is also found in the Black Book at Section VI, Paragraph 62(a)(1).[29] Individuals may be on rosters with other labor organizations, but not with other Teamster locals. The Union wrote, "This has nothing to do with paying "dobie dues" to another Teamster union or intention to transfer to another union. This language means that you may not go to another jurisdiction and be placed on their [r]oster. Many locals will allow members from other jurisdictions to work in their jurisdiction and pay a service fee, which is also known as "dobie dues," and Local 492 is fine with that ***as long as they do not roster you.***" (Jt. Exh. 9 (emphasis in original)). The Union also writes,

> In late 2014/early 2015 the 492 movie members were in an uproar over the local not enforcing the grouping system and the roster rules. Now those complaints have all but gone away and the rule breakers are now crying foul as we enforcing those rules without exception as the members demanded. We all need to just hang in there as these violators kick and scream because eventually they are going to realize that we are protecting the welfare of the Movie membership as a whole when we treat everybody the same and enforce the rules.

(Jt. Exh. 9.)

Malcom testified that if Kelman wanted to reclaim his spot on the Union's group 2 roster, he needed to remove his name from Local 222's roster, rejoin the Union and wait the 30-day permit period before he could go back to group 3 and complete 2 years on the Industry Experience Roster to return to group 2 (Tr. 73).

DISCUSSION

A. The Alleged De Facto Exclusive Hiring Hall

A threshold issue in this matter is whether during the relevant time, the Union operated a de facto exclusive hiring hall whereby the Union referred its members and nonmembers to jobs as drivers and wranglers on film productions in New Mexico. The General Counsel's allegations rely upon the premise that the Union operates an exclusive hiring hall. The Union argues it only maintains referral lists and cannot be an exclusive hiring hall since the production companies make the decision on whom to hire.

A union owes a duty of fair representation in the operation of a hiring hall only if it is the employer's exclusive source of labor. However, a union that operates a nonexclusive hiring hall owes no such obligation. Cf. *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 426 (1984), enfd. 772 F.2d 571 (9th Cir. 1985) (exclusive hiring hall), with *Carpenters Local 537 (E.I. du Pont)*, 303 NLRB 419, 420 (1991). The term "exclusive" as defined by the Supreme Court regarding a union's job referral system is the degree to which hiring is reserved to the union hiring hall. *Breininger v. Sheet Metal Workers International Association Local Union No. 6*, 493 U.S. 67, 71 fn. 1, 110 S.Ct. 424, 428 (1989). The party asserting the existence of an exclusive hiring hall bears the burden of proof. *Carpenters Local 537 (E.I. du Pont)*, supra at 420. The Board examines "the totality of the circumstances." *Local Union No. 174, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent (Totem Beverages, Inc.)*, 226 NLRB 690, 690 (1976).

An exclusive hiring hall may be created by written or oral agreement or by practice. See *Carpenters Local 1507*, 358 NLRB 1, fn. 2 (2012). Furthermore, a union's hiring hall is exclusive if it is an employer's initial or primary source for employees. *International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720, AFL–CIO, CLC (Tropicana Las Vegas, Inc.)*, 363 NLRB No. 148 (2016), citing *Staging Employees IATSE, Local 720 (AVW Audio Visuals, Inc.)*, 341 NLRB 1267 (2004), enfd. 718 Fed.Appx. 512 (9th Cir. 2012). But simply because an employer has the final decision on the selection of a worker does not render the hiring hall as non-exclusive. See, e.g., *Theatrical Wardrobe Union Local 769 (Broadway in Chicago)*, 349 NLRB 71, 72–73 (2007) (employer hired outside the union list on a few occasions when the list was exhausted).

Here, the record shows that the combined effect of the CBA between Local 399 and the various production, entertainment and film companies, the MOAs between the Union and the various production companies, and the practices of the Union and production companies created a de facto exclusive hiring hall at the Union. The CBA sets forth the terms and conditions of employment and includes informing the local business agent of the need to hire personnel with at least 72-hours' notice. Furthermore, the MOAs between the Union and the various production companies explains that the production companies agree to hire from the Union's Industry Experience Roster. While it is true that the production companies make the final decision on hiring from the Industry Experience Roster, the totality of the circumstances shows that the Union is the primary and initial source for drivers and wranglers when a MOA exists between the Union and the production company. Only after the production company has exhausted the Union's Industry Experience Roster may the production company hire "off the street" which has occurred rarely. Malcom offered examples of when a production company may not hire from the Union's Industry Experience Roster, but it is apparent that the bulk of drivers and wranglers come from the Union's list. Furthermore, Maestas testified that nearly all production companies enter MOAs with the Union which requires the production companies to hire from the Industry Experience Roster before hiring elsewhere. If a production company violates the MOA, the Union has monetary recourse via the grievance process.

The Union cites *Laborers Local 334 (Kvaerner Songer, Inc.)*, 335 NLRB 597, 599 (2001), in evaluating the issue of whether the union was an exclusive hiring hall (R. Br. at 9–10). The Union argues that the contract language in *Laborers Local 334*

[29] This par. states, "*One Roster Only*: No person who is registered on any one grouping Seniority Roster as above provided shall be eligible for any other grouping Seniority Roster, and no person who is registered on any other Motion Picture Producer's "Seniority Roster," as herein defined, shall be eligible for any other "Seniority Roster" hereunder."

(Kvaerner Songer, Inc.) is similar to language in its MOAs. However, in that matter, no exceptions had been filed to the judge's finding that the union operated a nonexclusive hiring hall. Id. at 599, fn. 2 (no exceptions filed to the judge's finding that the union did not violate Sections 8(b)(1)(A) and (2) of the Act). As such, that decision has no precedential value regarding the issue of exclusivity.

Based on the practices of the Union and production companies, I find that the Union operates an exclusive referral system for show and movie production work.

B. The Double-Roster Rule

1. Did the Union enforce an unlawful rule against Kelman?

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization "to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, provided that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." When a union operates an exclusive hiring hall, it has a duty of fair representation to all applicants using the hall, whether members or nonmembers. See *Breininger*, supra. The union must operate the exclusive hiring hall "in a fair and impartial manner. [. . .] any referral rules [. . .] cannot be discriminatory or arbitrary." *Boilermakers Local 374 (Combustion Engineering)*, 284 NLRB 1382, 1383 (1987), enfd. 852 F.2d 1353 (D.C. Cir. 1988). Contractual rules and referral rules must be followed, and objective criteria utilized. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB 50 (1982). The Board states,

> When a union prevents an employee from being hired or causes an employee's discharge, it has demonstrated its influence over the employee and its power to affect his livelihood in so dramatic a way that we will infer-or, if you please, adopt a presumption that-the effect of its action is to encourage union membership on the part of all employees who have perceived that exercise of power. But the inference may be overcome, or the presumption rebutted, not only when the interference with employment was pursuant to a valid union-security clause, but also in the instance where the facts show that the union action was necessary to the effective performance of its function of representing its constituency.

International Union of Operating Engineers, Local 18, AFL–CIO (Ohio Contractors Assn.), 204 NLRB 681 (1973), reversed on other grounds 496 F.2d 1308 (6th Cir. 1974), enfd denied 555 F.2d 552 (6th Cir. 1977). Unions have been able to rebut this presumption when they are able to show that the conduct of an individual interfered with the integrity of the referral system. See e.g., *Boilermakers Local 40 (Envirotech Corp.)*, 266 NLRB 432, 433–434 (1983) (union suspended an individual for violating referral rules by applying for work directly with employers).

The Union's double-roster rule prohibits anyone on another Teamster roster in the industry from being placed on or maintaining roster status in New Mexico. As the rule affects individuals' employment status, the General Counsel established a rebuttable presumption that the double-roster rule encourages union membership. See *Operating Engineers Local 18 (Ohio Contractors Assn.)*, supra. Since hiring by production companies occurs by group, a member being in group 1 and 2 has an advantage over lower seniority grouping, and more likely will obtain employment than will not.

Nonetheless, I find that the Union rebutted the presumption. As for whether the double-roster rule is consistent with the Union's duty of fair representation, the General Counsel must show that the Union acted "so far outside a 'wide range of reasonableness' as to be irrational." *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 67 (1991) (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)). Here, the Union's policy is not arbitrary, discriminatory or applied in bad faith. Cf. *Stagehands Referral Service*, 347 NLRB 1167, 1170-1171 (2006), enfd. 315 Fed.Appx. 318 (2d Cir. 2009) (union failed to refer a hiring hall member for arbitrary and invidious reasons when union failed to refer a member for performance problems while treating other members differently). The Union's double-roster rule is reasonably designed to ensure the effective operation of its hiring hall for members and nonmembers,[30] is based on objective criteria, has not be discriminatorily applied, and is clearly stated. See *IATSE Local 838 (Freeman Decorating Co.)*, 364 NLRB No. 81, slip op. at 4 (2016) (union's hiring hall attendance rules were lawful because they addressed legitimate concerns regarding the hall's operation). As for applicability to members and nonmembers, the applicability of the double-roster rule shows that these two groups of individuals are treated the same as demonstrated by Kelman's circumstances. Kelman, a union member, could not join another Teamster roster without losing his group 2 status on the Union's Industry Experience Roster. Moreover, an individual on a Teamster roster could not join the Union's Industry Experience Roster if he is rostered with another Teamsters local. The General Counsel argues that the term "roster" was undefined and unclear to Kelman. I reject this claim, however. The term roster is clearly discerned by its applicability in the context of the Union's Industry Experience Roster. In addition, I do not credit Kelman's claim that he did not know the term roster as he was familiar with the term in the summer of 2017 when he sought to join Local 222's hiring lists (after stating he was not registered anywhere else) and sought to move up in on the Union's Industry Experience Roster.

As for whether the rule is necessary to the Union's effective performance of its function of representing its constituency, the Board gives a union deference when deciding what conduct is reasonable to ensure the effective performance of its representative role. See *United Brotherhood of Painters, Local Union No. 487*, 226 NLRB 299, 301 (1976) (citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953) (statutory bargaining representative must be able to exercise a "wide range of reasonableness and discretion, subject to good faith, when serving its unit)). Furthermore, the Board does not require the union to show that it was "the best or only means available." *IATSE Local 838*

[30] In contrast, in *Fisher Theater*, 240 NLRB 678 (1979), the Board found that the rule requiring payment of fines applied to only nonmembers, and as such the union did not overcome the presumption.

(Freeman Decorating Co.), supra at slip op. 4 (citing *Millwrights' Local 1102 (Planet Corp.)*, 144 NLRB 798, 801-802 (1963)); *United Brotherhood of Painters, Decorators & Paperhangers of America, Local Union No. 487 (American Coatings, Inc.)*, 226 NLRB 299, 301 (1976).

Applying Board precedent, I find that the Union's double-roster rule is reasonably designed to serve its objective of preserving work for its hiring hall users. As explained by the Union's witnesses, the Union created the double-roster rule, in part, to address concerns by members that Teamsters from other locals were taking work in New Mexico from the Union's members who lived in New Mexico. Based on the credited evidence, the Union established the double-roster rule to retain job opportunities for its members in the state of New Mexico. After implementing the double-roster rule in 2016, the double-roster rule "completely" stopped Teamsters from other locals from taking work from the Union's Industry Experience Roster persons. Thus, the double-roster rule reasonably served its purpose to retain work for its hiring hall users and is necessary to the Union's function of representing its constituency.[31]

Because of violating the double-roster rule, the Union removed Kelman from its Industry Experience Roster, group 2, and placed him in group 6. However, the severity of the penalty does not render the Union's actions invalid. *NLRB v. Boeing Co.,* et al., 412 U.S. 67 (1973) (severity of the penalty is irrelevant if the action is ordered for legitimate, nondiscriminatory purposes). The General Counsel cites to *Fisher Theater*, supra, and *Pacific Maritime Assn.*, 228 NLRB 1383 (1977), for the proposition that the rules and consequences for violating the rules were only punitive and not for the proper maintenance of the hiring hall (GC Br. at 12–14). I disagree with the General Counsel's interpretation of these decisions. In both matters, the unions sought to impose fines on members unrelated to the hiring halls. Here, the Union's removal of Kelman from their roster, due to his rostering with Local 222, goes directly to the effective administration of the hiring hall. By moving Kelman to group 6, the Union removed him from the Industry Experience Roster, and placed him in the roster grouping that is specifically for hiring hall users who have not met the qualifications to be on the Industry Experience Roster. Kelman can cure his double-roster violation by meeting the requirements for group 3 which includes not being double-rostered. Moreover, unlike *Fisher Theater* and *Pacific Maritime*, the double-roster rule applies to both members and nonmembers.

Based on the above analysis, the Union's double-roster rule does not violate Section 8(b)(1)(A) of the Act as alleged.

2. Did the Union inform hiring hall users of the double-roster rule and the consequences for violating it?

The General Counsel also alleges that the Union did not inform all hiring hall users of the double-roster rule as well as the consequences for violating the rule. The Union merely argues that Kelman knew of the double-roster rule, and the consequences of violating the rule (R. Br. at 13–14).

The Board does not require hiring hall rules and procedures to be written[32] nor do referral rules, absent contractual agreement, need to be posted or incorporated into a contract.[33] But these contractual and referral rules must be followed, and objective criteria utilized. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB 50 (1982). In addition, if a hiring hall changes its rules, it must keep hiring hall users notified, and a failure to do so is arbitrary and a breach in the union's duty to inform its users and represent them fairly. See *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424 (1984), enfd. 772 F.2d 571 (9th Cir. 1985); *Electrical Workers IBEW Local 164 (NECA)*, 190 NLRB 196 (1971),review denied sub nom. *Bleier v. NLRB*, 457 F.2d 871 (3d Cir. 1972).

Here, a preponderance of the evidence indicates that the Union took reasonable steps to directly notify its hiring hall users of the double-roster rule, including Kelman. The Union sent notice of the double-roster rule via the procedures for the Industry Experience Roster to all active members of the hiring hall in November 2015. Thereafter, the Union again provided Kelman with a copy of the double-roster rule in June 2017 when he sought to move from group 3 to group 2. There was no evidence presented at the hearing that the Union was negligent in ensuring all users of the hiring hall were informed of the hiring hall's double-roster rule. Thus, the Union gave timely notice of the double-roster rule prior to its implementation in January 2016, and the Union did not violate the Act.

Furthermore, the General Counsel alleges that Respondent failed to notify hiring hall users of the consequences of violating the double-roster rule. In this instance, the Union removed Kelman from its Industry Experience Roster since Kelman rostered with Local 222 in Utah in violation of the double-roster rule. As such, the Union placed Kelman on its group 6 or supplemental roster which is the group for members who do not yet meet the criteria to be placed on the Union's Industry Experience Roster including residency or CDL requirements. In accordance with the double-roster rule, Kelman could not be on the Industry Experience Roster, and needed to be removed as such. The Union then offered Kelman options on how he could proceed. Although these "consequences" are not specifically set forth in the double-roster rules, I do not find that the union acted in an arbitrary manner.

Moreover, none of the cases cited by the General Counsel support the proposition that a union must inform hiring hall users of the consequences for violating a rule. The General Counsel claims that the test is a "simple relevancy' test as to whether the information is necessary for hiring hall users "for an intelligent utilization of the hiring hall" (GC Br. at 19, citing *International Brotherhood of Electrical Workers, Local 6, AFL–CIO (The San Francisco Electrical Contractors Assn: Butcher Electric)*, 318 NLRB 109, 134)).[34] However, this "relevancy test" has no

[31] It should be noted, although it has no bearing on this decision, that Local 399 has a similar double-roster rule in the Black Book.

[32] *Laborers Local 394*, 247 NLRB 97 (1980), affd. 659 F.2d 252 (D.C. Cir. 1981).

[33] *Iron Workers Local 505 (Snelson-Anvil)*, 275 NLRB 1113 (1985), enfd. 794 F.2d 1474 (9thCir. 1986).

[34] The additional cases cited by the General Counsel address the issue of whether the union is obligated to comply with an employee's request

precedential value as the Board specifically passed on the judge's finding. Id. at 109. The General Counsel also cites to two other decisions *Plumbers Local 519 (Sam Bloom Plumbing)*, 306 NLRB 810, 810 fn. 1 (1992), enfd. 15 F.3d 1160 (D.C. Cir. 1994); *Plumbers Local 38 (Bechtel Corp.)*, 306 NLRB 511, 511–512 (1992), enfd. mem. 17 F.3d 393 (9th Cir. 1994), to support its argument. However, these cases address violations and remedies of the Act when changes to hiring hall rules are unlawful only to the extent the union failed to give adequate notice. Accordingly, I find that the Union did not violate the Act as alleged.

CONCLUSIONS OF LAW

1. International Brotherhood Union of Teamsters Local 492 (Union or Respondent) is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

2. Fire and Ice Productions, Inc. (Employer) is, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Union did not violate the Act in any manner alleged in the complaint.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, I issue the following recommended[35]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. June 24, 2019.

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for information (GC Br. at 19). Here, there is no allegation that the Union refused to provide information requested by Kelman.

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