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

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 657 (NORTH CENTER PRODUCTIONS, INC.) (NETFLIX PRODUCTIONS, INC.) (EYE PRODUCTIONS, INC.)

and **Cases 16-CB-294650**
16-CB-303345
16-CB-305026

JEFFREY PATRICK NORRIS

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for the General Counsel

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for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. Based upon charges filed by Jeffrey Patrick Norris (Norris), an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) issued on August 11, 2023, alleging that the International Brother of Teamsters, Local 657 (referred to herein as Respondent, Local 657, or Union) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). Specifically, the Complaint, as amended at trial, alleges that by Respondent violated the Act by: discriminating against nonunion employees with respect to job referrals from the Local 657 exclusive hiring hall; refusing to refer Norris and two other Local 657 members because they engaged in dissident and other union and concerted activities; and filing internal charges against Norris seeking his expulsion from Local 657. On August 24, 2023, Respondent filed its Answer, denying the unfair labor practice allegations. This matter was tried before me on April 2 and 3, 2024, in Austin, Texas.[1]

[1] Transcript citations are denoted by "Tr." with the appropriate page number. Citations to the General Counsel, Respondent, and Joint exhibits are denoted by "GC," "R," and "J" respectively. Transcript and exhibit citations are intended as an aid only. Factual findings are based upon the entire record and may include parts of the record that are not specifically cited.

After considering the entire record, including my observation of witness demeanor, and having reviewed the briefs filed by the General Counsel and Respondent, I make the following findings of fact and conclusions of law.[2]

I. JURISDICTION AND LABOR ORGANIZATION

The parties admit that North Center Productions, Inc. (North Center Productions),[3] Netflix Productions Inc. (Netflix), and Eye Productions, Inc. (Eye Productions) are corporations with offices and places of business in and around Ausitn, Texas, and have been engaged in the business of producing movies and shows for television. The parties further admit that North Center Productions, Netflix, and Eye Productions, individually perform services annually valued in excess of $50,000 in states other than the State of Texas. Based upon these admissions, I find that North Center Productions, Netflix, and Eye Productions, are employers engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act. Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and the National Labor Relations Board (NLRB or the Board) has jurisdiction pursuant to Section 10(a) of the Act. (GC. 1(k), 1(o))

II. BACKGROUND FACTS

A. The Union operates an exclusive hiring hall

Respondent is a chartered local of the International Brotherhood of Teamsters; its jurisdiction covers a large area of southcentral Texas, including the cities of San Antonio and Austin, along with the counties of San Patricio, Karnes, Bexar, Mason, Edwards, Medina, Webb, and Hidalgo. Frank Perkins (Perkins) is Respondent's President, and has held this position since 2001. Before that, Perkins was Local 657's Secretary Treasurer and Business Representative. See *Teamsters Local 657 (Texia Productions, Inc.)*, 342 NLRB 637, 643 (2004). During the relevant period Donald Pick (Pick) served as a Business Agent for Local 657. From about the last half of 2021 through December 16, 2022, Pick was the Union's Business Agent assigned to the motion picture and television industry. As part of his job duties in this role, Pick was responsible for providing the Union's various hiring hall referral lists to motion picture and television production companies who have agreements with Local 657. Both Perkins and Pick are admitted agents of Respondent. (Tr. 29, 56, 101; GC. 1(k); GC. 1(o); J. 2)

For years, the Union has operated a motion picture and television industry hiring hall providing labor to production companies filming within Respondent's jurisdiction. Prior to filming a movie or television show, production companies enter into an agreement with Local 657 to provide the drivers needed to operate the different equipment used during production, this includes various types of trucks, trailers, vans, buses, and generators. *Teamsters Local 657 (Texia Productions, Inc.)*, 346 NLRB 690, 691 (2006). Historically, Respondent's hiring hall has

[2] Testimony contrary to my findings has been specifically considered and discredited. The demeanor of each witness was assessed during their testimony, and whether explicitly mentioned in the decision or not, I have considered witness demeanor in making my findings.

[3] At hearing, the government withdrew Complaint paragraph 7(b), which alleged Respondent issued, and/or caused North Center Productions to issue, a written discipline to Joe Olvera; Olvera died in September 2023. (Tr. 10–12)

been exclusive. *Teamsters Local 657*, 342 NLRB at 641–643. Generally, this means that a union retains the sole authority to supply workers to the production company up to an agreed upon percentage or period of time. *Breininger v. Sheet Metal Workers Int'l Ass'n Loc. Union No. 6*, 493 U.S. 67, 67 fn. 1 (1989).

To facilitate the referral of qualified labor to the production companies, Local 657 has established certain hiring hall referral rules. *Teamsters Local 657*, 342 NLRB at 642. Respondent's current hiring hall referral rules are dated October 19, 2008, and titled "Teamsters Local 657 Film Industry Craft Rules;" they read as follows:

A. Teamsters Local 657 has jurisdiction over the Film Craft in a designated geographic area.

B. The Local Union will maintain a list of the Teamsters Local 657 Film Area Industry Experience List and a Teamsters Local 657 Film Area Industry Experience B List.

C. The Local Union also maintains a Call list for out of work members who will be referred after the lists mentioned in item B above.

D. Members who worked in the Film Industry prior to January 1, 1995 will be considered as the Teamsters Local 657 Area Industry Experience List.

E. All Film Craft Members are required to possess a current Commercial Drivers License (CDL) and a Department of Transportation (DOT) Physical Card.

F. For this purpose, all bargaining unit employees will be referred to the Employer by the Local Union on a non-discriminatory basis and such referrals shall in no way be affected by union membership. The Employers further agrees that prior to hiring anyone from the referral list, 90% of the qualified employees listed on the Industry Experience Roster shall be employed.

G. Should the employer need additional employees after the Teamsters Local 657 Film Industry Experienced Employee list is exhausted they shall contact the Local Union for the Teamsters Local 657 Industry B list and agrees to hire 90% of the employees from such list prior to hiring additional employees.

H. Should the employer need additional employees after the list referred to in section C and D of this Article he/she shall contact the Local Union for a referral list and will select remaining employees from that list.

I. All Film Industry Members will maintain a correct address and phone number listed with the Local Union.

J. When work load justifies the Local Union will consider adding additional drivers to the Teamsters Local 657 Film Area Experience List and/or the Teamsters Local 657 Film Area Industry Experience B List.

K. Referrals by the Local Union are made on a nondiscriminatory basis and are not based on or in any way affected by race, sex, age, national origin, disability, religion, union membership or lawful union-related activity.

Generally, the Teamsters Local 657 Film Area Industry Experience List is referred to as the "A List," or "Craft A List;" the Teamsters Local 657 Film Area Industry Experience B List is referred to as the "B List" or the "Craft B List." Both lists are sometimes referred to jointly as the "Craft List." (Tr. 29, 54, 72–73, 79, 82–89, 144, 175, 295, 322; GC. 2, 3, 7, 14; J. 1)

B. The creation of the referral lists

Workers on the A and B Lists are considered by Respondent as "craft members." For some of these craft members, the motion picture and television industry is their primary source of full-time employment; being on the "A/B craft list" has allowed them to make "a good living" for a number of years. (Tr. 84) As to how the Craft List was created, Perkins testified that when he took office members were complaining that Respondent did not have any referral rules in place, with people claiming they were being discriminated against or otherwise not being referred to production companies for work. Also, Perkins said some members were worried that he would "bring in a bunch of my guys" for the movie/television work and that the experienced movie and television drivers would be replaced. (Tr. 144) Therefore, according to Perkins, Local 657 established a "rule that says if you were in the movie industry in Local 657 prior to January 1st, 1995, you were on the 'A' List." (Id) Later, in 2001, Perkins testified Respondent created a B List that included anyone that worked prior to March 2001, and that in 2008 they "combined it a little bit." (Tr. 154) Regarding the Craft List, during a 2021 internal union hearing, Perkins said that the movie/television industry positions are "great jobs," and that the Craft List was set up "to protect the area experienced crafts . . . for their work and their dedication into building the industry in our Local Union." (GC. 44, p 188) (Tr. 84, 143–144, 154)

Both the A List and the B Lists are closed. And, the parties stipulated that, during the relevant period, only Local 657 members are included on both lists. It does not appear that anyone has been added to the A List since it was created in 2001 or to the B list since at least 2008. (Tr. 89, 152, 255–256)

Eventually, Respondent created a third list as a pool of union labor for times when the production companies needed additional workers. This list is referred to as the "Call List." Union members on the Call List were historically treated as "casual or temporary employees," and were not allowed to vote for the movie/television industry shop stewards or to vote on referral rule changes. Regarding the Call List, Perkins testified that it was "just for extra people if we needed them." (Tr 144) Perkins also testified that he told members on the Call List to not "rely on the movies, don't quit your regular jobs because they're here and then they go," referring to the motion picture and television production companies. (Tr .144) Finally, Local 657 created and

maintains a separate list for non-members (the Non-Members List). Some individuals on the Non-Members List have worked in the motion picture and television industry for 10 to 12 years, but are not members of Local 657. (Tr. 88) Perkins acknowledged that the Call List was created in an attempt to have Union members employed before referring non-members to the production companies for work, a practice that he had previously said was "borderline . . . legally." (GC. 44 pp. 188–189) (Tr. 31–32, 134–135, 139, 144; GC. 26; GC. 29, p. 2)

To be included on both the Call List and the Non-Members List, individuals need to sign a specific form once a quarter. When needed, Pick would send a new Call List and a new Non-Members List to the production companies at the start of each quarter, with the expectation that they would hire from the Call List first, and then the Non-Members List. There is no particular method or order of seniority with respect to how names are enumerated on these two lists. And, the only difference between the two lists is that the Call List contains union members, while the Non-Members List is reserved for non-members. (Tr. 31–34, 60–61, 85; GC. 17, 18; J. 3–4)

C. Contracts between Respondent and production companies

Perkins testified that when a production company signs a collective-bargaining agreement with Local 657, there is a reference in the contract specifically stating that the company agrees to follow the Union's hiring hall referral rules. (Tr. 145) One such collective-bargaining agreement was introduced into evidence. In April 2022, Local 657 entered into a collective-bargaining agreement with Netflix for the production of the film Spy Kids: Armageddon (Netflix CBA). Article 6 of the Netflix CBA reads, in pertinent part, as follows:

> The parties hereto recognize the conditions of the motion picture industry require frequent hiring of workers on a daily non-continuing basis. For this purpose, the Local Union shall maintain, for the convenience of the Producer and the employee, a referral service which shall, in all respects, comply with the applicable provisions of law.
>
> In the jurisdiction of Local 657, the following rules would be adhered to:
>
> The Producer agrees to hire all drivers, mechanics, dispatchers, and captains required for work covered by the AGREEMENT from the Local Union. The Producer further agrees to abide by the referral rules and the hiring practices of the Local Union.

Article 14 of the Netflix CBA states that there "shall be no discrimination against any employee due to race, color, creed, religion, sex, sexual preference, age, qualified disability, national origin, veteran status or Union membership." (J. 5) In its Answer, Respondent admits that it has maintained and enforced collective-bargaining agreements with different production companies, including Netflix, requiring them to use the Local 657 hiring hall as the exclusive source of referrals. Regarding the allegations herein, there is no dispute that Respondent has been operating an exclusive hiring hall for the motion picture and television industry. (Tr. 145; GC. 1(k), 1(o); J. 5)

III. UNFAIR LABOR PRACTICE ALLEGATIONS

A. Alleged discriminatory operation of the hiring hall

1. Facts

Television and motion picture production companies hire a transportation coordinator to oversee all transportation needs during filming. Although the position is generally staffed by someone who is a member of the Teamsters, the transportation coordinator is not covered by the contract between Respondent and the production company. As part of the job, the transportation coordinator reviews equipment needs with representatives of the production company, usually the unit production manager, and works up a list of equipment that will be used during filming, including trucks, trailers, buses, vans, generators, etc. The transportation coordinator also determines how many drivers will be needed to operate the equipment throughout the various parts of the production. (Tr. 79–82, 298–299, 307, 310; J. 5)

Regarding the transportation department, after the coordinator, the next person hired is the transportation captain, who is a craft member. The job of transportation captain is a union position, covered by Local 657's collective-bargaining agreement with the production company. Part of a transportation captain's duties include ensuring that all drivers have a call time to start work and a wrap time to end work each day, recording those times, and turning them into the appropriate dispatcher. The transportation captain also scouts locations, is responsible for coordinating the parking of the various trucks and equipment at a particular location, dispatches or moves various vehicles throughout the day as needed, and prepares for the next day's shoot, ensuring all drivers know their assignments. (Tr. 80, 261, 285–286; J. 5, pp. 2, 4)

After the captain is hired, the transportation coordinator contacts Local 657 for the Craft List to begin the process of hiring the needed drivers. After receiving the A and B Lists, the coordinator works with the captain to determine which drivers will be needed to operate the various equipment used during production; after coming up with a register of drivers, the names are forwarded to the production company to finalize the actual hiring. The process was described by Janice Little (Little), a longtime Local 657 A List member, who has experience working as a transportation coordinator. Little testified that the transportation coordinator, together with the captain, "just kind of fill names in where employees work the best," and then turn this list over to the production company which actually hires the workers. (Tr. 84) (Tr. 34, 80–84, 287, 300, 308–309)

Production companies are required to hire 90% of the individuals from the A List and B List before moving on to the Call List. If these requirements have been met, and more drivers are needed, the Union sends out the Call List first, before sending the Non-Members List. Pick testified that the Call List is sent before the Non-Members List because it is the Union's preference that the production companies hire Local 657 members before hiring non-members. Evidence in the record shows that Pick consistently followed the procedure of sending production companies the Craft List first, then the Call List, and the Non-Members List last. Ultimately, the Union is not responsible for contacting the various workers on the lists for work. A production company employee, like the transportation coordinator or transportation captain, is

the one who contacts the individuals on the referral lists to see if they are available to work. The record also shows that the transportation coordinators and captains know about, and follow, the Union's hiring hall procedure with respect to the preferences given each list. (Tr. 34–37, 56, 80–86, 94–95, 265–266, 286–289, 294, 300–301; GC. 2–11, 14–19)

Little testified that, because the A List and B List are small, in comparison to the number of drivers needed, she calls everyone on the Craft List to see if they are available, knowing she will "need to fill a lot of spaces," and need "a lot of drivers." Also, Little said that "generally we know who is and who isn't working because our Craft List isn't that large . . . and we all have known each other since the 90's," referring to the craft members; so she usually knows if a certain driver is working on another production. That being said, Little testified she still confirms the availability of members from the Craft List, by "just kind of just start[ing] at the top" and calling them to ask about their availability. Furthermore, Little said "certain drivers always kind of drive the same equipment" so those drivers "just automatically go in those slots." Drivers "are hired as their truck is needed to work," and are "feathered in" accordingly. (Tr. 82–83)

Little also testified that, as a transportation coordinator, there have been times when she wanted to call or hire a non-member but could not do so because she had not exhausted the names on the Call List. According to Little, some of the non-members are very experienced and have worked in the industry for 10 to 12 years, but are not members of Local 657. As transportation coordinator, Little would rather have these experienced non-members working on a production as opposed to a Local 657 member with little or no production experience, as it is her job to make sure the "production happens," as the Transportation Department on a show "take[s] care of everyone," by moving the different departments including "[g]rip, electric, hair, [and] makeup," to different locations. (Tr. 88) Indeed, the Transportation Department oversees all the production's rolling stock used during filming, and those drivers are covered by the Local 657 contract, except for drivers in the catering department. (Tr. 88, 97–98)

Regarding hiring, Gregory Faucett (Faucett), an experienced transportation captain who is also on the Local 657 A List, testified that everyone on the A and B Lists are called to see "who wants to come play." (Tr. 288) Then, after everyone on the Craft List has been contacted, Faucett said "you move on to the members non-craft [list] and do the same thing. And if you're roster is not full with drivers by then, then you would obviously move on to the non-Union non-craft list."[4] (Tr. 288) As to the order in which people are contacted, Faucett testified that he knows 95 percent of the people on the list, and so he will "just marry them" to the equipment that will be used, considering the person's license and past history, and make his recommendations to the transportation coordinator accordingly. Faucett said it is ultimately up to the producers to determine who will be hired. (Tr. 287–288, 290)

At times, individuals on the Non-Members List are hired before union members when they have special training or a special piece of equipment is involved, like a generator operator, who is needed to transport and operate a generator. A generator operator drives a 53-foot tractor trailer that has a large 1600 amp fuel-powered generator connected to the tractor. The generator emits enough power to run whatever base camp that is used during filming, which can include multiple trailers used by the cast, hair and makeup department, and office staff personnel. The

[4] Transcript pate 288, line 23 should read "roster" instead of "rooster."

generator itself is a very expensive piece of equipment, typically owned by a third party and leased to the production company. The generator owner usually recommends a specific person to operate the equipment, because of the potential dangers to people on the set, to the production in general, and to the equipment, if the generator is operated incorrectly or if it malfunctions. For these reasons production companies can determine who drives and operates the generator truck. The evidence shows that non-member Kyle Craytor, who is a generator operator, and has specific training to operate these types of generators, has been hired on productions before members whose names are on the Call List, but who do not have experience operating this type of equipment.[5] (Tr. 73–74, 90–92, 294–295; GC. 43, pp. 16, 28; GC. 45, pp. 5–6; J. 1)

Respondent tries to be vigilant with respect to enforcing its hiring hall rules with signatory employers. Perkins acknowledged that, if Local 657 finds out a production company has hired a non-member before of a union member, Respondent will go to the production company and tell them to fix it, which they usually do by adding an additional worker. Also, the evidence shows that during the filming of two separate television shows in late 2021, the production companies took a break for Christmas and New Years. Upon returning to work, previously hired employees started working again, in whatever order the production company determined. The Union filed grievances, taking the position that the production companies needed to treat the post-holiday resumption as if they were hiring anew, and were required to start hiring again, using the Craft List first, then the Call List, and the Non-Members List last. The Union ultimately lost these grievances at arbitration. (Tr. 49–50, 139, 322–324; GC. 12; GC. 44, #188–189; R. 1, 2)

2. Analysis

"Where, as in this case, a union operates an exclusive hiring hall 'it must refer applicants . . . without regard to union affiliation.'" *Teamsters Local 100, (Beta Productions LLC)*, 370 NLRB No. 36, slip op. at 3 (2020) (quoting *NLRB v. IBEW, Local Union 112*, 827 F.2d 530, 532 (9th Cir. 1987)). Here, the evidence clearly shows that Respondent considers union affiliation with respect to referral priority, and that non-members are placed in the lowest priority referral group.

Referrals from Local 657's exclusive hiring hall to the various motion picture and television production companies are made in the following order: Local 657 members on the A List first; Local 657 members on the B List second; Local 657 members on the Call List third; and fourth are workers who are not members of Local 657 that are on the Non-Members List. And, pursuant to the Union's rules and practices, non-members should not be referred until after employees on the A List, B List, and Call List have had referral opportunities. The inability of non-members to get a higher referral priority, regardless of their experience, is exacerbated by Respondent's practice of sending a new Call List and Non-Members list to production companies at the start of each quarter, with the expectation that the company would hire union members on the Call List first, before contacting drivers on the Non-Members List.

Respondent cannot escape the finding of a violation by claiming that non-members are regularly hired during some productions, or that the government did not point to any specific

[5] Kyle Craytor is also the son of Local 657 A List member Tracy Craytor. (Tr. 258, 272–273)

non-member who was denied employment. (Resp't Br. at 17–18) Respondent's practice is unlawful because it "favors those who are union members . . . and disfavors individuals who have exercised their Section 7 right to refrain from union activity." *Teamsters Local 100 (Beta Productions LLC)*, 370 NLRB No. 36, slip op. at 3 (2020) (violation where hiring hall rules gave preference to drivers based upon experience performing "Teamster work" in the "Teamsters Movie Industry" within the union's geographical jurisdiction). Moreover, Little specifically testified that there has been at least one time when she wanted to contact an experienced non-member for hire but could not do so because she had not exhausted the Call List. (Tr. 88)

Respondent similarly cannot avoid a violation by pointing to the portion of its hiring hall rules, or the clause it in its production company CBA, that says referrals made by the Union are done so on a nondiscriminatory basis and are not based upon union membership or lawful union-related activity. (Resp't Br. at 18) Had Local 657's hiring hall rules been based solely upon industry seniority, then this clause could potentially be used to help shield the Union from liability. *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, v. NLRB*, 365 U.S. 667, 668, 675–676 (1961) (union's exclusive hiring hall rules for the hiring of casual employees were valid, as they were based upon industry seniority and contained a provision that said seniority ratings are made irrespective of union membership). Here, however, placement on the A List is based upon both seniority, and membership status. The Respondent's hiring hall rules specifically state that the A List is comprised of "[m]embers who worked in the Film Industry prior to January 1, 1995." (GC. 2) And, placement on the Call List is specifically restricted to Local 657 members, as the Union's rules say that it will maintain a Call list of "out of work members" to be referred after the Craft List is exhausted. (GC. 2) Finally, the Respondent admitted that the Craft List, which is closed, contains only union members. Thus non-members cannot gain placement on the Craft List even if they have worked in the "Film Industry prior to January 1, 1995." (GC. 2)

The evidenced definitely shows that Respondent uses union membership status as a factor in determining referral priority from its exclusive hiring hall. Accordingly, I find that, by operating an exclusive hiring hall that provides job referral priority preference based upon union membership status, Respondent has violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

B. Alleged discrimination against Norris, Johnson, and Olvera

Norris, Michael Johnson (Johnson), and Joe Olvera (Olvera) are Local 657 Call List members. All three held a Commercial Driver's License (CDL). Olvera and Johnson possessed a Class A CDL while Norris held a Class B CDL. Class B CDL license holders can only drive a vehicle that weighs 26,000 pounds or less, while Class A CDL drivers can operate vehicles weighing over 26,000 pounds.[6] (Tr. 309–310; GC. 5–6, 8–10)

1. Protected activities by Norris, Olvera, and Johnson.

[6] See also, https://www.fmcsa.dot.gov/registration/commercial-drivers-license/drivers (last accessed on March 5, 2025) (explaining Class A, Class B, and Class C CLDs). *United States v. Charles*, 456 F. Supp. 3d 268, 283 fn. 11 (D. Mass. 2020) ("Courts may take judicial notice of the contents of federal agencies' websites that are not subject to reasonable dispute.").

a. Norris and Johnson run for office as a slate

In November 2021, the Union held elections for local officers. Olvera nominated Norris to run against Perkins for president. A group of four other dissident members, including Johnson who ran for vice-president, joined with Norris and ran as a unified slate against the existing Local 657 leadership. Ultimately, Norris and one other person from his slate were disqualified, because they were late on their union dues. However, the three other dissident members of the slate, including Johnson, continued with their campaign for union office, but lost overwhelmingly. (Tr. 103, 158–159, 202–204, 239–240, 242)

b. Internal union charges and complaints

Norris, Johnson, and Olvera were all part of a small group of dissident Local 657 members who were dissatisfied with the Union's leadership involving various matters, including issues relating to the motion picture and television industry referral system and rights of members on the Call List. This group filed various internal union complaints and charges against Local 657's officers, or individuals associated with the Union's leadership team.

i. March 2020 request for a hearing

In March 2020, the dissident group submitted a one-page request to Teamsters Joint Council 58 for a hearing over alleged violations of the Teamsters constitution and accusing Local 657 of: not allowing them to vote or run for steward; not allowing them to advance at their place of employment; and not giving them fair treatment "among other members at [their] assigned job." (GC. 25) The request to Joint Council 58 was signed by Norris on behalf of himself, Johnson, Olvera, and five other named members, and was couched as an "appeal" of decisions made by Perkins and the Local 657 Executive Board. (Tr. 159–161; GC. 25)

A Teamsters Joint Council is a group of officials from different Teamster locals in a particular geographic area. The Joint Council usually reviews charges as an initial appeals board, after a ruling has been made by a local union executive board. The Joint Council also hears charges directly when a charge is made against a local union. In all situations, appeals from Joint Council decisions are heard by the General Executive Board, which is comprised of various higher level Teamster officials from across the country.[7] (Tr. 133–134, 159)

Perkins responded to the complaint via a letter addressed to Joint Council 58 dated March 31, 2020, denying that any violations occurred, and broadly stating there was no "appeal" to be had, as Norris was complaining about statements Perkins made in a meeting responding to Norris's request to change the movie industry craft and referral rules. In his letter to the Joint Council, Perkins wrote that "Norris and a few other Call List workers began to demand that they be given the same referral status as B list members," and that Norris started demanding the right to vote during movie industry craft meetings about referral rules and industry stewards. Perkins further wrote that during a meeting in January 2020, Norris tried to present an amendment to the Local 657 bylaws "to press his position on the stated topics," but was unable to obtain the

[7] See also *Marek v. Morisse*, No. 77-C-748, 1978 WL 1716, at *2 (E.D. Wis. 1978) (discussing the Teamsters internal union grievance procedure in the Teamsters Constitution).

necessary signatures to support his proposed amendment. Perkins further asserted that, in a subsequent meeting a few months later, he told Norris to "take his charges or appeals to whoever he wishes" because no changes were going to be made to the movie industry craft or referral rules that would negatively impact any longtime regular craft members, and they were "not going to change rules supported by a substantial number of craft members to satisfy the selfish interests of a few." (GC. 26) It is unclear from the record whether Joint Council 58 ever responded to the March 2020 hearing request or to Perkins's letter. (Tr. 160–163; GC. 26)

On June 9, 2020, Norris emailed Perkins about the Call List, and copied ten other Local 657 members, including Olvera and Johnon, on the correspondence. The email reads as follows:

> Brother President Perkins,
>
> We collectively, ask you to restore our Constitutional Rights as a Teamster.
> Unfortunately, we have come to our end of the road. Collectively we have over 100 years of hard work and dedication to the assignments that we have been committed to.
> You have recommended us to countless production companies and we have devoted countless hours of representation as a proud Teamster.
> Not one of us has bribed you or campaigned for a job.
> We have never let our Brotherhood down.
> We are ready to fight and appeal, unfortunately, for our democracy and respect.
> You have no defense.
> We will pursue to the fullest extent possible, including, if necessary, civil procedures against you.
> Please make amends with the people that you need to make amends with.
> This, Brother Perkins, Is our very last try to get you to honor your Oath of Office.
> You should take some time to renew your Oath and study the Teamster Constitution.
> Don't forget, you have an obligation. We expect to have a different outlook in our Sunday meeting.
> We will be there and Expect you to address our situation and make us proud again.
>
> Fraternally Yours.
>
> Brother Jeffrey Patrick Norris and all Members of 657 assigned by yourself to any employment.

It does not appear that Perkins ever responded to Norris's email. (Tr. 214–215; GC. 27)

ii. Charges involving the rights of Call List members or complaints against Perkins

On March 7, 2021, Norris sent an email to Local 657 officials, including Perkins and Pick; the subject line of the email read "Jeff Norris' appeal on his right to vote and/or run for steward at his assigned place of employment." The email starts with what appears to be a quote from an unnamed source about the "PROTECTION OF THE RIGHT TO SUE" a labor

organization. Norris then writes that he is "out of options," as almost a year has passed since he complained against Perkins's decision to not allow him to "participate in a union representative (shop steward) election." Norris stated in the email that Joint Council 58 "failed to order any actions" over his complaints, and the "international legal team has failed to issue a decision." Therefore, Norris asked that the Local 657 leadership send him contact information for somebody named "Mr. Baab," within 24 hours, so that Norris could ask Babb for an "immediate opinion."[8] If Local 657 did not respond within 24 hours, Norris wrote that he planned to "continue with litigation." Norris ended the email by saying "I expect and anticipate your rebuttal." (GC. 28) (Tr. 165–167; GC. 28)

On April 28, 2022, the Local 657 Executive Board issued two written decisions based upon charges filed by Norris, Johnson, Olvera, and three other Union members, in May 2021. The first decision involved complaints that: Local 657 precluded Call List members from voting on film industry stewards or referral rule changes on the same basis as craft members; Local 657 excluded Call List members from craft meetings; Perkins improperly negotiated CBAs with production companies; the Local 657 production company CBAs were substandard; and Call List members are unable to vote on the CBAs. In its ruling, the Executive Board dismissed the allegations involving: Call List members voting on CBAs; claims that film industry CBAs were substandard; and assertions that it was improper for Perkins to negotiate the CBAs. The Executive Board sustained the charges with respect to Call List members being excluded from voting during steward elections, and being excluded from craft meetings. In its decision, the Executive Board issued an order saying that it "will introduce amendments to the Bylaws that permits Call List members to vote on a steward election while they are working on a production film, referral rule changes, and any other vote affecting their terms and conditions of employment, to the extent that such votes are held, on the same basis as craft members." (GC. 29) (Tr. 168–169, 218)

The second decision issued on April 28, involved allegations that, during a Union meeting a member named "Joe" initiated "violence" against another member named Mike and that Perkins allowed the incident to continue, making him guilty of collusion; Mike was one of the six individuals who filed the charge. Regarding this charge, the Local 657 Executive Board found that Joe "acted inappropriately" by coming towards Mike "in an intimidating manner, threatening violence," but that leading up to the confrontation Mike and others were antagonizing Joe; thus Joe was not issued any formal discipline. Regarding Perkins, the Executive Board noted the incident "erupted very quickly and was diffused just as quickly." But, the Executive Board said that in future meetings "Perkins will do more to preserve order," and required Perkins to identify a sergeant at arms at the start of each meeting to preserve order and to make a statement at the meetings about maintaining order. (Tr. 169–172, 218; GC. 30, 31)

iii. January 2022 charges

On January 28, 2022, Norris filed internal union charges against Local 657 member Phil Schriber, asking for a hearing before the Local 657 Executive Board. The charge was filed by Norris, and signed by himself and seven other dissident members, including Olvera and Johnson.

[8] It is unclear from the record why Norris was seeking an opinion from Mr. Baab, or what type of leadership role, if any, Baab held with the Teamsters.

In the charge, Norris claimed that, while Schriber was serving as a transportation coordinator for the show *Walker Ranger* being produced by EYE Productions, he refused to hire/refer Norris and the other charging parties in violation of the Teamsters constitution. (GC. 33, Tr. 175, 220)

On January 29, 2022, Olvera filed internal union charges against shop steward Ronnie Reeves. The charges involved various alleged statements Reeves made to Olvera, a discipline Reeves presented Olvera, and a claim that Reeves refused to recall Olvera for work. The grievance document was drafted by Norris, at Olvera's request, and Norris described the dispute as Reeves "harassing" Olvera on the job. (Tr. 173; GC. 32)

A hearing on the charges against Reeves and Schriber was scheduled for January 2022, but the charges were withdrawn before the hearing, via a letter signed by Norris. In his letter, Norris wrote that the "charges now include Local 657 and will be decided by Joint Council 58." Norris testified he withdrew the charges because the dissident group believed Local 657 was involved in the alleged violations, and not just Reeves and Schriber. (GC. 34, Tr. 176)

iv. May 2022 charges against the Local 657 Executive Board, Reeves, and Schriber

In May 2022, the dissident members involved in the January charges against Reeves and Schriber filed a charge directly with Joint Council 58. This charge, which was sent via email from Norris, alleged that the entire "Local 657 Executive Board (with Frank Perkins as the Principal Officer)" aided and abetted in "a full refusal to hire scheme" against the charging parties, involving alleged "extortion and racketeering," with the help of Schriber and Reeves. At the core of the allegations were claims that the charging parties were not being hired for jobs in the movie/film industry because of their dissident union activities, including being "active and against [the] Perkins' slate" of candidates in Local 657's November 2021 election. (GC. 35(a), 35(b); Tr. 177–181, 220–222, 237)

A hearing was held and on October 31, 2022, Joint Council 58 issued a written opinion dismissing the charges. In its opinion, the Joint Council noted that grievances had been filed against the production companies in question over the claim that Local 657 members were not hired, and that arbitration over these grievances was pending. Therefore, the Joint Council believed the grievances/arbitrations would determine whether the charging parties were improperly denied employment. As for claims of misconduct by the Local 657 Executive Board and its supporters, the Joint Counsel observed that there was "no doubt [the] charging parties are opposed to the Local 657 regime," but held "opposition does not equate to racketeering." Thus, the Joint Council found that the charging parties did not establish that a "scheme" or "conspiracy" existed as to their not being hired on "jobs worked on by non-657 area workers." (GC. 36) (Tr. 181–182)

c. Grievances filed against North Center Productions

In about April 2022, Olvera and Norris filed grievances against North Center Productions, regarding conduct that allegedly occurred between September and December 2021, while they were working on the HBO miniseries *Love & Death*. Ultimately, it appears that one grievance was settled, while the other grievances were withdrawn. (Tr. 50–53, 222; GC. 13)

d. NLRB charges filed against various production companies

On February 2, 2022, Norris filed two unfair labor practice charges with the NLRB against two separate production companies. The first charge was against North Center Productions, and alleged the failure to hire Norris, Johnson, and five other Call List members, along with claims of discrimination against Olvera. The charge further alleged that North Center Productions made various threats and unlawful statements to employees. North Center Productions entered into a settlement agreement with the NLRB and agreed to post a notice involving various statements made by company officials. The company also agreed to remove from its files references to an unlawful discipline issued to Olvera. No mention is made in the settlement over the alleged refusal to hire Norris or the others, and it appears those allegations were either withdrawn or dismissed. (Tr. 182–187, 222; GC. 37)

The second charge was filed against Eye Productions, alleging the refusal to hire Norris, Olvera, Johnson, five other Call List members during the production of *Walker Ranger*. This charge resulted in a settlement agreement where Eye Productions agreed to cease and desist from refusing to hire employees for participating in union and other protected activities and to remove from its files references to its unlawful failure to hire Norris, Johnson, and the five other Call List members listed in the charge.[9] The settlement also required Eye Production to pay Johnson, Norris, and two other employees backpay and other make-whole relief payments totaling almost $33,500. (Tr. 187, 220, 224; GC. 38)

e. Other NLRB charges filed against the Union

Between March and June 2022, Norris filed four charges against Local 657 with the NLRB that are unrelated to the allegations herein. The first charge, filed on March 17, alleges that the Union caused, or attempted to cause, a production company named CANAM Productions to not employee Norris as a transportation captain in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act. This charge was withdrawn by Norris in April 2022. The second charge, filed on June 6, alleged that the Union refused to provide Norris with a copy of the collective-bargaining agreement between the Local 657 and a production company named Troublemaker Studios. This charge was withdrawn by Norris three weeks later. The third charge, filed on June 7, 2022, alleged that Local 657 failed and refused to process a grievance filed by Norris involving the refusal of North Center Productions to provide certain contractual information to the Union. This charge was withdrawn by Norris in July 2022. The fourth charge, filed on June 13, 2022, alleged that Local 657 refused to provide Norris with copies of the most recent referral list, in violation of Section 8(b)(1)(A). This charge was withdrawn by Norris a few weeks later. (Tr. 182, 188; GC. 39–42)

2. The hiring for Spy Kids Armageddon

The movie Spy Kids Armageddon (Spy Kids) was filmed within Local 657's jurisdiction, and as mentioned above, Local 657 and Netflix entered into the Spy Kids CBA which contained

[9] It appears that claims involving Olvera, who had been hired by Eye Production, were withdrawn, as he is not included in the settlement.

an exclusive hiring hall provision. Nate Antunez (Antunez) was the transportation coordinator for Spy Kids. Antunez is a member of Teamsters Local 399 in California. Prior to Spy Kids, Antunez had about two-weeks' worth of experience working with Local 657 and was only familiar with a couple of the drivers from the Union. Faucett and Tracy Craytor (Craytor) were the transportation captains on Spy Kids. Both are Craft List members of Local 657, and they were the first two people hired on the production; Faucett was hired on April 16, 2022, and Craytor on April 25. Faucett worked as the transportation captain on the show for a few weeks before moving on to another project in Georgia. Upon Faucett's departure, Craytor took over as transportation captain. Then, sometime after July 18, 2022, Faucett returned to Spy Kids as the transportation captain, when Craytor's left the show. Faucett explained that Craytor left the production on a Friday, and Faucett took over as captain on Monday. (Tr. 258, 284–287, 291–292, 298–301; J. 1, 5)

The parties stipulated to the hiring list showing the names, hire dates, and hiring hall list status, of the employees who worked on Spy Kids that were referred from the Union's hiring hall.[10] The below chart, derived from the list entered into evidence, shows the information stipulated by the parties. Other than Faucett, Craytor, Norris, Johnson, Olvera, and Kyle Craytor, the chart only shows the initial of each driver's last name. (J. 1; Tr. 26)

4/16/22; Faucett–A List	6/6/22; H.–Call List	7/18/22; E.–Non-Mem. List
4/25/22; T. Craytor–A List	6/6/22; M.–Call List	7/18/22; G.–Non-Mem. List
5/3/22; G.–A List	6/6/22; R.–Call List	7/18/22; Johnson–Call List
5/4/22; S.–A List	6/6/22; S.–B List	7/18/22; Norris–Call List
5/10/22; C.–A List	6/6/22; S.–A List	7/18/22; Olvera–Call List
5/13/22; N.–B List	6/6/22; T.–A List	7/18/22; R.–Non-Mem. List
5/13/22; R.–B List	6/9/22; K. Craytor.–Non-Mem. List	7/18/22; W.–Non-Mem. List
5/23/22; B.–Call List	6/10/22; F.–Call	7/21/22; J.–Non-Mem. List
5/27/22; F.–Call List	6/10/22; G.–Call	7/26/22; E.–Non-Mem. List
5/31/22; P.–Call List	6/10/22; K.–Call	8/3/22; S.–Non-Mem. List
5/31/22; R.–B List	6/10/22; R.–Call	8/3/22; V.–Non-Mem. List
5/31/22; S.–B List	6/10/22; W.–A List	8/11/22; C.–Non-Mem. List
6/2/22; A.–B List	6/11/22; B.–Call	8/11/22; C.–Non-Mem. List
6/6/22; A.–Call List	6/14/22; L.–A List	8/12/22; P.–Non-Mem. List
6/6/22; C.–Call List	7/18/22; D.–A List	8/13/22; C.–Call List

The list shows that Norris, Johnson, and Olvera were hired on July 18, 2022, the same day various non-member drivers started working on the show. The only non-member that was hired before Norris, Johnson, and Olvera was Kyle Craytor, who was hired in the specialized position of generator operator.[11] (Tr. 275; J. 1) Antunez, Craytor, Johnson, and Norris all testified about the hiring that occurred during the production of Spy Kids.

[10] Joint Exhibit 1 was stipulated into evidence by the parties. (Tr. 25–26) I rely upon, and credit, the information set forth in the stipulated exhibit over any testimony to the contrary regarding the dates employees were hired. See *Labor Plus LLC*, 366 NLRB No. 109, slip op. at 9 fn. 33 (2018) (absent special consideration, stipulations of fact voluntarily entered into by the parties are binding on both trial and appellate courts).

[11] The other generator operator on the show was a Call List member named Joel, who was hired on May 31, 2022. (Tr. 295; J. 1) Transcript page 295, line 10 should read Joel instead of Joe.

a. The testimony of Nate Antunez

Regarding the hiring on Spy Kids, Antunez testified that he received the initial Craft List from Pick, and discussed the list with Faucett. The record shows that Pick sent the initial Craft List to Antunez, Faucett, and Craytor on May 2, 2022, and the first regular driver employed was an A List member who was hired on May 3, 2022, which would have been after Craytor took over as transportation captain. Antunez testified that he worked with Craytor on hiring drivers for the show, and Craytor helped him select drivers from the Local 657 hiring lists. According to Antunez, when he goes to a city where he does not know the abilities of local drivers, he relies upon the transportation captain to help him pick drivers to staff the production. (Tr. 55–57, 300–301; GC. 14; J. 1)

Antunez initially testified that, although he could not recall any precise instances, he probably asked about specific drivers and their abilities, rather than simply deferring to Craytor's recommendations for hiring.[12] However, Antunez admitted that, in a sworn affidavit given to the NLRB during the underlying investigation, he stated that he would tell Craytor the types of vehicles which needed to be manned, directed Craytor to select the drivers from that the hiring hall list, and that he relied upon "the local captain to hire drivers because they know the drivers on each list." (Tr. 305) In subsequent testimony, Antunez explained the statement in his affidavit saying that he would tell Craytor "I need to man these vehicles, I need the qualified drivers for these vehicles," and then set forth the number and types of vehicles needed, like "a big rig," or a "van" and ask Craytor "who's qualified." (Tr. 307–308) Antunez testified that he was not putting the responsibility on Craytor "to hire the bodies," but was asking him for recommendations. After drivers were qualified, which includes drug testing, Antunez said he would email the production company saying "I would like to hire John Doe as a grip driver, here's all their paperwork." (Tr. 309) (Tr. 303–309)

Antunez testified that Norris, Olvera, and Johnson were all hired as positions became available. Regarding Norris, who had a "B" classification on his CDL license, Antunez said there were no positions needed for Class B CDL drivers at the beginning of the production, as most of the equipment they used weighed 96,000 pounds, which was above the 26,000 pound maximum weight allowed for a driver with a "B" classification. Antunez could not recall what equipment Olvera operated on the show, but believed that Norris and Johnson were hired to drive a "people mover" which is a 26 passenger bus. When asked if he could recall Craytor ever saying anything negative about Norris or Olvera, Antunez answered "no." As for Johnson, Antunez testified that Craytor did not say anything negative about Johnson, other than telling him that Johnson had damaged a truck in the past. And, regarding Johnson being hired on the show although he had previously damaged a truck, Antunez said that "[a]ccidents happen but it is what it is." (Tr. 311) (Tr. 309–311)

b. Testimony of Gregory Faucett

Faucett testified that while he was transportation captain at the start of the production, he asked for the A and B List from the Union, as per the standard operating procedure. When he

[12] Transcript page 302, lines 16 and 18 should read "defer" instead of "refer."

returned to his role as captain in July,[13] Faucett said that he did not play a role in selecting drivers to work on the show, except for some "day players" for weekend work, as everyone else had been hired.[14] According to Faucett, he recommended three day players be hired in August 2022, saying it was weekend work in downtown Austin, and not many people want to work over the weekend. Regarding these three hires, Faucett said that he and Antunez "went off the list together," and that he had already called a lot of people who declined the work. (Tr. 290) Faucett said that when he returned to the show as transportation captain in July, Norris, Johnson, and Olvera had already been hired the previous week.[15] (Tr. 291) (Tr. 286–288, 290–293)

c. Testimony of Tracy Craytor

Regarding the selection of drivers for Spy Kids, Craytor testified that Antunez would ask him for references on different drivers, regarding their abilities, and he would respond with the "the best people I know of and their abilities. You know, what they can drive, what they can't drive," and who he trusted driving different equipment efficiently. (Tr. 262) Craytor said Antunez would ask him who he thought was appropriate to hire and he would refer names of specific drivers off the different lists who were the best people he knew. Craytor further testified that he did not want to have to worry about having "some goofball out there," working under him "tearing up stuff." (Tr. 263) According to Craytor, he knows how the industry works and knows "a lot of great drivers and everything," as he's been a member of the Union for over 30 years. (Tr. 364) (Tr. 262–263, 268, 364)[16]

When asked whether he said anything negative to Antunez about Norris, Olvera, or Johnson during the production of Spy Kids, Craytor answered "[n]o, not that I recall." (Tr. 271) As for the fact that Norris, Olvera, and Johnson had filed grievances and NLRB charges against production companies, Craytor said that, in his opinion, this conduct risked running productions out of town and causing productions to not film within Local 657's jurisdiction. (Tr. 269) Craytor explained rhetorically, "if you brought a movie company in here and it costs you X amount of dollars extra, would you come here or would you look at going somewhere else." (Tr. 270) Craytor further said that the "movies can come and go. So if we get a bad rep here, do you think they're going to come here?" (Tr. 276)

d. Testimony of Michael Johnson

Johnson testified that on July 1, 2022, he received a call from Antunez, who left him a voicemail asking if Johnson wanted to work on Spy Kids, and that on July 11, 2022, he started working on the show.[17] Craytor was the transportation captain at the time Johnson was hired, and Johnson worked on Spy Kids until about late August 2022. (Tr. 248–249)

[13] Before taking over from Craytor as captain, Faucett had rejoined Spy Kids driving a camera truck. (Tr. 294)
[14] Day players are drivers "who come in and work a day here or there, two days as a time." (Tr. 288)
[15] Transcript page 291, line 17 should read "stint" instead of "stent." Page 292, line 14 should read "I'll pass the witness," instead of "What passed this."
[16] Transcript page 268, line 22 should read "THE WITNESS" instead of "MR. PUCKET."
[17] The stipulated hiring list shows that Johnson was hired on July 18, 2022. (J. 1)

Johnson, who works both in the film and trade show industries, had previously worked on productions where Craytor was the transportation captain. Johnson worked on seasons six and seven of the production *Fear of the Walking Dead*, where Craytor was one of the transportation captains. However, Johnson testified that it was Faucett, and not Craytor, who contacted him to work on that show. (Tr. 245–247, 250–251)

e. Testimony of Jeffrey Norris

On June 28, 2022, Norris filed three grievances, against Netflix for refusing to hire himself, Olvera, and Johnson. One grievance was filed on his own behalf, one was filed on behalf of Olvera, and the third on behalf of Johnson, The grievances alleged that Netflix refused to hire Teamster members, in favor of non-members, family, and friends, and that it did so in retaliation for the concerted activities of the union members. (GC. 20) Norris testified that the grievances were ultimately withdrawn because after the three were hired to work on Spy Kids, they "found out that the production was not at fault for not calling us to work." (Tr. 191) (Tr. 190–192, 220, 225; GC. 20)

Norris received a call on July 11, 2022, to work on the production, and started working on July 18. During his testimony, Norris confirmed that other Union members he considered as fellow "dissidents" were hired to work on Spy Kids before Norris, Olvera, and Johnson. Two were hired on June 6, 2022, and three others were hired on June 10. (Tr. 189, 194, 226–227)

In July 2023, Norris filed internal union charges against Craytor alleging he violated the Teamsters constitution and Local 657 bylaws by refusing to hire Norris, Olvera, and Johnson to work on Spy Kids. Norris eventually asked for a continuation of the grievance hearing, because of the related unfair labor practice allegations in this matter. However, the Local 657 Executive Board declined, noting that the NLRB allegations and the alleged violations of the union constitution and bylaws are separate issues. A hearing was held, and in October 2023, the Local 657 Executive Board dismissed the charges, finding that Norris did not meet his burden of proof. (Tr. 277–278, 282, 327–329; GC. 45)

3. Analysis

a. Legal Standard

The Complaint alleges that Respondent, through Craytor as transportation captain, was responsible for delaying the referral of Norris, Johnson, and Olvera for employment with Netflix for work on Spy Kids, until July 2022, in violation of Section 8(b)(2) of the Act, and that Respondent violated its duty of fair representation with respect to each of them in violation of Section 8(b)(1)(A) of the Act.

In determining whether a union operating an exclusive hiring hall has violated Section 8(b)(1)(A), the Board applies a duty of fair representation analysis. *SSA Pacific, Inc.*, 366 NLRB No. 51, slip op. at 1, 12, 16 (2018). For related 8(b)(2) allegations, the Board applies both a duty-of-fair representation framework, as well as the burden shifting analysis set forth in *Wright Line*, 251 NLRB 1083 (1968). Id., slip op. at 17–18 (in cases relating to alleged discrimination against

a union involving dispatches from its exclusive hiring hall, Board applies the duty of representation framework to the 8(b)(1)(A) claims and both a *Wright Line* and duty of fair representation framework to the 8(b)(2) allegations).

i. The duty of fair representation

"The Act prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." *SSA Pacific,* 336 NLRB No. 51, slip op. at 16 (citing *Miranda Fuel*, 140 NLRB 181, 185 (1962)). "The duty requires a union to 'represent fairly the interests of all bargaining unit members,' regardless of whether they are union members." Id. (quoting *Electrical Workers (IBEW) v. Foust,* 442 U.S. 42, 47 (1979)). It also requires a union to exercise its discretion with complete good faith and honesty to all, without hostility or discrimination, and to avoid arbitrary conduct. Id. (citing *Vaca v. Sipes,* 386 U.S. 171, 177 (1967)). While a union is given a wide range of reasonableness in serving the unit it represents, it is "always subject to complete good faith and honesty of purpose in the exercise of its discretion." Id. (cleaned up). As such, not every negligent or disparate act can be characterized as unlawful; instead only those acts which are "motivated by hostile, invidious, irrelevant, or unfair considerations, may be characterized as arbitrary conduct." Id. (cleaned up).

A "union's duty of fair representation extends to its operation of an exclusive hiring hall." *SSA Pacific, Inc.*, 336 NLRB No. 51, slip op. 16. "[W]here a union 'causes, attempts to cause, or prevents an employee from being hired or otherwise impairs the job status of an employee,' the Board draws an inference of unlawful coercion, which may be rebutted if the union shows its actions were justified," Id. (quoting *LIUNA, Local 872,* 359 NLRB 1076, 1077 (2013)). Such justification includes showing that "its actions were takin in good faith, based upon rational considerations, and were linked in some way to its need to effectively represent its constituency as a whole." Id. at 17 (cleaned up).

ii. *Wright Line*

To establish a violation under the *Wright Line* burden shifting framework, the General Counsel must establish that employee protected concerted activity was a substantial or motivating factor in the Respondent's adverse employment actions. *SSA Pacific, Inc.*, 336 NLRB No. 51, slip op. 17. To establish a prima facie case, the government must show protected activity, such as dissident union activity, knowledge on the part of the respondent, and requisite animus towards the protected conduct. *Amalgamated Transit Union, Local 689,* 373 NLRB No. 49 slip op. at 5 (2024); *The Gulfport Stevedoring Assn.,* 363 NLRB 149, 152 (2015). "If the General Counsel makes the required initial showing, the burden then shifts to the [r]espondent to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's protected activity. *SSA Pacific, Inc.*, 336 NLRB No. 51, slip op. 17. (cleaned up) See also *Operating Engineers Local 137 (Various Employers),* 317 NLRB 909, 923 (1995) (applying *Wright Line* to allegations involving a union's discriminatory delay in dispatching dissident union members from hiring hall). A respondent "cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." *Consolidated Bus Transit,* 350 NLRB

1064, 1066 (2007), enfd. 577 F.3d 467 (2d Cir. 2009) (cleaned up). Where a respondent's explanation is pretext, such a finding "defeats any attempt by the union to show that it would have not referred the" employees absent their protected activities. *Teamsters Gen. Loc. Union No. 200*, 357 NLRB 1844, 1852 (2011), enfd. 723 F.3d 778 (7th Cir. 2013).

b. The allegations involving Norris, Johnson, and Olvera

i. *Wright Line* analysis

Norris, Johnson, and Olvera were the last Call List members hired for Spy Kids. While other Call List members started getting hired for the show in May 2023, Norris, Johnson, and Olvera were not hired until July 18, the same day that general non-member drivers were being hired. Here, the evidence supports a finding that the General Counsel has established a prima facie case of discrimination against Respondent for delaying their referral to work on Spy Kids until July 2023. The record shows that Norris, Johnson, and Olvera were all engaged in protected activities, including dissident union activities, and filing or being named in charges and grievances; Respondent, including Craytor, knew about this conduct. Respondent's animus is shown by the contemporaneous unfair labor practice violations in this matter regarding the general operation of the hiring hall. *Sprain Brook Manor Nursing Home, LLC*, 359 NLRB 929, 939 (2013), reaffirmed 361 NLRB 607 (2014) (contemporaneous commission of other unfair labor practices is evidence of animus). Animus is also shown by the fact that Craytor, who was responsible for referring employees for hire to Antunez, did not like that Norris, Johnson, and Olvera, were filing grievances and charges against production companies, activities protected under Section 7 of the Act. *Yesterday's Child., Inc.*, 321 NLRB 766, 768 (1996), enfd. in pert. part. 115 F.3d 36 (1997) (1st Cir. 1997) (supervisor's dislike of employee arose from his resentment of the employee's protected activities, which is evidence of unlawful animus towards those activities). The government having shown the protected activities by Norris, Johnson, and Olvera was a motivating factor in Respondent's having delayed their referrals to Spy Kids until July 2023, the burden shifts to the Local 657 to prove, as an affirmative defense, that it would have taken the same action even in the absence of their protected activity. I find that the Union has not met this burden regarding Johnson and Olvera, but has met its rebuttal burden with respect to Norris.

While Craytor was not ultimately responsible for hiring on Spy Kids, the evidence overwhelmingly shows that, while he was transportation captain, he was the proverbial "gate keeper," as he had sole responsibility for referring drivers to Antunez. Antunez was not familiar with the Local 657 drivers, and he relied upon Craytor's recommendations for hiring. Antunez would tell Craytor the types of vehicles which needed to be staffed, and Craytor would recommend specific drivers to Antunez for those vehicles; Antunez would then forward those names to the production company for hire. Craytor testified that he did not want "some goofball out there" and it was clear that Craytor did not like the fact that Norris, Johnson, and Olvera were filing grievances and NLRB charges. Craytor, who was an A List member, and had worked in the movie/television industry for years, believed that, by filing charges and grievances, Norris, Johnson, and Olvera were jeopardizing Local 657's movie and television industry work.

The evidence also shows that Norris, Johnson, and Olvera were an identifiable team in their protected conduct. Along with filing grievances and charges together, Olvera was the one who nominated Norris to run against Perkins for Local 657 president, while Johnson ran on the same slate with Norris. Johnson also served as Norris's representative during an internal union hearing. Johnson and Olvera, who held Class A CDL licenses, were just as qualified as the other Call List members that were referred in May and June.[18] And, the Union presented no evidence as to why Johnson and Olvera were in the last group of Call List members hired. Under these circumstances, I find that the record supports a finding that Respondent's delayed referral of Johson and Olvera because they had engaged in activities protected under Section 7 of the Act, including dissident union activities, and Respondent has not shown that it would have taken the same action absent their protected conduct.

Respondent cannot avoid a violation by arguing that other dissident members were hired to work on Spy Kids. (Resp't Br. at 22–23) "[U]nlawful motivation is not somehow disproved by the fact that a respondent did not retaliate against each and every employee engaged in statutorily protected activities." *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 675 (2002); see also *H.B. Zachry Co.*, 332 NLRB 1178, 1183 (2000) ("[A]n employer's failure to discriminate against all applicants in a specific category is not decisive in cases involving refusal-to-hire allegations."). The same is true regarding the Union's claim that there can be no violation because it referred Olvera and Johnson to other jobs, unrelated to Spy Kids. Cf. *Casey Electric, Inc.*, 313 NLRB 774, 784 (1994) (that respondent eventually hired employees does not excuse its unlawful failure to hire them earlier). Accordingly, by delaying the referral of Johnson and Olvera to Spy Kids, because they engaged in protected activities, including dissident union activities, Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act as alleged in the Complaint.

Regarding Norris, I believe the Union has shown that the delay in referring Norris to Spy Kids would have occurred even in the absence of his Section 7 protected activities. Unlike Johnson and Olvera, Norris held a Class B CDL license. As such, Norris could only drive trucks with a gross weight of 26,000 pounds or less. Antunez, who was the transportation coordinator, and responsible for determining which vehicles were needed each day, testified that most of the equipment they used weighed 96,000 pounds, and there were no positions needed for "B license drivers" at the beginning of the production. The General Counsel has not shown that this explanation is pretext, as no evidence was introduced showing that any vehicles that were 26,000 pounds or less were used on the show before Norris was hired. Furthermore, it appears that Norris was the only Call List member with a Class B CDL license. (GC. 5, p. 2; GC. 12, p. 6; GC. 16, p. 2) And, the record evidence shows that no other Class B CDL driver was hired to work on Spy Kids before Norris. In fact, Respondent did not start employing Class B CDL drivers until July 18, 2022, the day Norris started working.[19] Accordingly, I recommend that Complaint paragraph 7(c) be dismissed with respect to Norris.

[18] As for the fact that Johnson had previously damaged a truck, Craytor did not testify that this played any role in his referral decision. And, it ultimately did not matter to Antunez.

[19] Along with Norris, one other Class B CDL driver was hired on July 18. Further Class B CDL drivers, all non-member, were hired on July 21, and August 3. Compare J. 1 with GC. 19, p. 3, showing that the following Class B CDL drivers hired on Spy Kids: Norris (7/18/22); Joan (7/18/22); Derek (7/21/22); Caroleta (8/3/22); and Stephen (8/3/22).

ii. Duty of fair representation analysis

The same finding is warranted applying a duty of fair representation analysis. Respondent started referring Call List members to Spy Kids on May 23, 2022. However, neither Johnson nor Olvera were referred by Craytor until July 2023, after thirteen Call List members had already been hired to work on the show in May and June. It was clear from the record testimony that Antunez relied upon Craytor's recommendations for hiring, and thus individual drivers could not get referred without a recommendation from Craytor. And, Respondent presented no evidence that justified delaying the referral of Johnson and Olvera until mid-July when Non-Members List workers were also being referred for work. As such, I find that Local 657 has not shown that the delayed referral of Johnson and Olvera was made in "good faith, based upon rational considerations," or that it was "linked in some way to its need to effectively represent its constituency as a whole." *SSA Pacific Inc.*, 336 NLRB No. 51, slip op. at 16.

Respondent has shown that the delayed referral of Norris was justified. As noted above, Norris was the only Call List member with a Class B CDL license, and Antunez testified that there were no openings for Class B licensed drivers at the beginning of production, as most of the equipment used weighed 96,000 pounds. A review of the record evidence shows that no other Class B CDL driver was hired before Norris, and Respondent did not start employing Class B CDL drivers until July 18, 2022. Under the circumstances, I find that Norris would not have been referred to Spy Kids until the time when other Class B CDL drivers were being hired, and that there was no violation of Respondent's duty of fair representation regarding Norris.

C. Allegations involving the internal charges Perkins filed against Norris

1. Facts

On May 24, 2022, a gunman murdered nineteen students and two teachers at an elementary school in Uvalde, Texas. *Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety & Homeland Sec.*, 664 F. Supp. 3d 584, 598 (D. Del. 2023), aff'd, 108 F.4th 194 (3d Cir. 2024). On June 10, 2022, Local 657 held a general membership meeting where they discussed the Executive Board's decision to donate $10,000 to a charity in order to help the families of the children killed in the shooting; Local 657 had members who lived in Uvalde. During the meeting, a motion was made to increase the donation from $10,000 to $80,000. As president, Perkins allowed the motion to proceed to a vote, and the motion passed. However, the Union's Executive Board later overrode the decision, finding the vote did not meet the parameters of the Union's bylaws and constitution, and that allowing such a large donation based upon an improper vote would violate the board's fiduciary duty.[20] During his testimony, Perkins characterized the motion and vote to increase the donation to $80,000 as "somebody trying to make a political point in a monthly meeting." (Tr. 146) Ultimately, the Union donated $10,000 to the charity as originally planned, and the Executive Board's decision to donate $10,000, instead of $80,000, was announced to the membership at the next general meeting. (Tr. 104–106, 145–146; GC. 21, p. 1; GC. 23)

[20] Transcript page 105, line 18 should read $80,000 instead of $8,000. (Tr. 105)

On July 11, 2022, Norris sent an email addressed to Local 657's general email address, with a copy to 16 specific individuals, including Pick and Perkins; the subject of the email read "Uvalde Contribution Denial." Norris believed that all 16 people on the email correspondence were members of Local 657. However, one individual included on the email chain, named Salgado, was not a member. Perkins's testified that, while Salgado had in the past been part of a bargaining unit at United Parcel Service (UPS) that was represented by Local 657, he had never joined or otherwise become a member of the Union. (Tr. 112, 115–116, 200; GC. 21)

Salgado had previously been the primary character in an incident which ultimately led to the suspension of Perkins from Local 657 for 60 days, along with the expulsion from the Union of a longtime Business Agent, who was also Local 657's Secretary Treasurer, via a decision made by Teamsters Joint Council 58. The suspension and expulsion were based upon an event that occurred in 2020, when someone tape recorded a grievance meeting discussing pending disciplinary charges against Salgado. In the recording the Business Agent in question could be heard advising a UPS representative on how to effectively present the company's case against workers in disciplinary hearings. The audio tape was later circulated on social media and was brought to the attention of Perkins. Perkins and the Business Agent appealed the Joint Council's disciplinary decision to the General Executive Board. In January 2022, the General Executive Board found that the Business Agent's conduct was a blatant violation of his oath and obligation to workers and sustained the expulsion. The General Executive Board also sustained the decision to suspend Perkins from membership for 60 days. In so doing, it criticized Perkins's initial inaction, and his inadequate discipline of the Business Agent. The General Executive Board also noted that Perkins continued to emphasize that the recording was made illegally, and that Salgado: was not a Union member; was not disciplined as a result of the Business Agent's actions; and was subsequently discharged by the company for dishonesty involving an unrelated matter. The General Executive Board found the issues raised by Perkins against Salgado were not relevant to the allegations in question, and that Local 657 owed a duty of fair representation to Salgado as a member of the bargaining unit, regardless of whether he was, or was not, a paid Union member. (GC. 24)

The email that Norris sent on July 11, 2022, to the Union and the 16 individuals reads as follows:

> Siblings,
>
> In a very unfortunate and selfish manner, our executive board, led by Frank Perkins has decided to reverse our membership decision to contribute to the Uvalde Tragedy.
>
> Our prayers remain with our siblings affected by the atrocity. We will continue to move forward in a positive manner.
>
> It makes me reflect on a passage from Ecclesiastes, forgive me for not remembering the exact words, but "Everything is BIG in GOD's timing."

> Sincerely and Fraternally I would like to thank the Members for the motion. The debate. And the final vote to allocate the funds.
>
> Unfortunately, as we see; we still have a long way to go. A democracy has today, again, been denied by the selfish interests of a few.

Norris had also been posting information about Local 657's internal proceedings on a Facebook group site, where Salgado was the administrator. The Facebook group included various individuals, some of whom were not members of the Union. Norris said that he posted the information on this Facebook group page because it was a "private site" where they discussed "union business among other Teamsters," and that the site exposed what he described as "corruption." (Tr. 201) That being said, Norris admitted that he knew there were people in the Facebook group that were not members of Local 657. (Tr. 200–201; GC. 21)

Some posts that Norris made on the Facebook site were introduced into evidence. These posts involved the following topics: Norris offering to email copies of a hearing transcript involving charges that were filed against Perkins for "corruption in the film industry," to anyone who asked; announcing the start of Perkins' 60 day suspension; announcing the time and place of the next Local 657 meeting; announcing that "Local 657 will stand trial for Film Industry corruption charges" before Joint Council 58; and discussing what occurred during a Local 657 union meeting on June 12, 2022, while accusing Perkins of misconduct. It appears that Norris also posted his July 11, 2022, email on the Facebook site, but this post was not introduced into evidence. Perkins learned about these posts, as different Union members sent him screen shots of the Facebook group page. (Tr. 113; GC. 21; GC. 23, p. 4)

On July 21, 2022, Perkins filed an internal union complaint/charge against Norris with the Local 657 Executive Board, via a letter to the Union's Secretary-Treasurer. In the letter, Perkins accused Norris of violating the International Brotherhood of Teamsters constitution, and Local 657's bylaws. Specifically, Perkins asserted that, by including Salgado in his July 11, 2022 email, Norris "has been divulging Union Business to at least one non-member via email." (GC. 21) He also writes in the letter that, while investigating Norris's "divulging Union Business to non-members" he was made aware of several posts Norris made to a "Facebook page owned and operated by two non-members," including Salgado and another individual who was a "former member who applied for and received a withdraw[al] from Teamsters Local 657 in July 2020, after being terminated for just cause when stealing time dishonestly."[21] (GC. 21) In his letter, Perkins quotes Norris's email, and also attached a copy of the email along with screen shots of the different posts made on the Facebook group page. The remedy Perkins sought in his charge was to have Norris expelled from the Union. (Tr. 114–115, 123; GC. 21)

Regarding his investigation into Norris's actions, Perkins testified that, in the months leading up to the charge, he had received verbal complaints from members about people sharing Union business with non-members and then the information getting posted on the internet. Perkins also testified that, after becoming aware of these allegations, he advised members during union meetings generally that "these meetings were for union members of Local 657 only," and

[21] Perkins testified that being on "withdrawal" from the Union means that the individual is not paying dues and is not working in any union industry. (Tr. 114)

that what occurs during the meeting should not "be shared outside of the meeting unless it's [with] other union members." (Tr. 123–124) However, Perkins said that he never made this statement directly to Norris, but only made general statements about this topic during meetings. Finally, Perkins testified that, in the past, there have been situations where members had filed charges against other members alleging a violation of the Teamsters oath that were presented to the Local 657 Executive Board for decision. However, this was the first time Perkins had personally filed a charge involving such an incident. (Tr. 107–108, 123–124, 150)

The Local 657 Executive Board, minus Perkins, held a hearing on the charge against Norris, and issued a written decision on January 9, 2023. Johnson represented Norris during the hearing. In its decision, the Executive Board stated that the Teamsters International constitution makes clear that every Teamster member pledges that they "will not divulge to non-members the private business of the Union unless authorized to reveal the same." (GC. 23, p. 4) And, Local 657's bylaws also require that "each member take an 'oath of obligation' that includes a prohibition of members from disclosing the private business of the union to non-members." (GC. 23, p. 4) The Executive Board also noted that Perkins begins each membership meeting with a statement saying that "information in this and all membership meetings in Local 657 are for the members of Local 657 and no one else. It is a violation of the IBT [International Brotherhood of Teamsters] Constitution and the Teamsters Local 657 Bylaws to divulge Union Business to non-members." (GC. 23, p. 5) (Tr. 241–242; GC. 23; J. 2)

The Executive Board found that one of the recipients of Norris's July 11, 2022 email was a non-member. It also found that Norris posted the email to the Facebook group page, which also included multiple non-members. Furthermore, the Executive Board held that the email "disclosed what occurred in the membership meeting regarding the decision to reverse our membership decision to contribute to the Uvalde Tragedy." (GC. 23) Accordingly, the Executive Board found that "Norris' actions constitute a violation of the Constitution and Bylaws of the Union, and a breach of Norris' oath of obligation." Finding "that a violation has been proved," the Executive Board issued Norris an admonishment for "disclosing the private business of the Union." The Executive Board decided to "not implement any suspension or further penalty beyond admonishment at this time," but warned Norris that, if he "is found to have engaged in a similar violation . . . in the future, such further behavior could result in more formal sanctions, including but not limited to suspension or expulsion from the Union." Perkins testified that Norris appealed the decision to the Joint Council, which affirmed the Local 657 Executive Board's ruling and admonishment. (Tr. 150–151; GC. 23)

2. Analysis

The Board does not prohibit a union from disciplining its members under Section 8(b)(1)(A) when the discipline involves "a purely intraunion dispute, and does not interfere with the employee-employer relationship, or contravene a policy of the National Labor Relations Act." *OPEIU, Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1426 (2000). In *OPEIU, Local 251*, a union vice-president was removed from office after complaining about how the president handled a $58,000 disbursement check from the international; the check had been endorsed directly to a law firm in settlement of a lawsuit against the local. Id. The president filed a petition to impeach the vice-president, asserting she had engaged in various inappropriate

actions, including by publicizing the issue regarding the $58,000 check. Id. After a hearing, the vice-president was removed from office and permanently expelled from the union. Id.

The General Counsel in *OPEIU, Local 251* alleged that the union's conduct in dismissing the vice-president violated Section 8(b)(1)(A) of the Act. However, the Board found that the issue was an intraunion dispute that neither impacted the participants' relationship with their employer, nor impaired a policy of the Act. Id. at 1424. The Board noted that Section 8(b)(1)(A) proscribes intraunion discipline in only three situations: (1) where there are unacceptable methods of union coercion in the employment context, such as threats of job loss or physical violence to force dissenting employees to join a union or participate in a strike; (2) where there is conduct taken against union members that directly impedes access to the Board's processes, such as enforcing rules that unduly hamper the ability of members to bring a matter to the Board for consideration; and (3) "when intraunion discipline clashes directly with statutory policy interests and prohibitions incorporated in the Act." Id. at 1424. Regarding the latter category, the *OPEIU, Local 251* Board cited three cases as examples of situations when intraunion discipline clashes with "statutory policy interests and prohibitions incorporated in the Act." Id. The first example is when a union fines employees to compel conduct in violation of a collective bargaining agreement. Id. (citing *Mine Workers Local 12419 (National Grinding Wheel Co.)*, 176 NLRB 628 (1969)). The second involves situations where members are punitively fined for seeking access to the Board's processes in order to file a decertification petition. Id. (citing *Molders Local 125 (Blackhawk Tanning Co.)*, 178 NLRB 208, 209 (1969)). The third involves instances where union members are fined for refusing to engage in conduct that would violate Section 8(b)(4)(B) of the Act. Id. (citing *Plumbers (Hanson Plumbing)*, 277 NLRB 1231 (1985). See also *LIUNA, Local 91 (Scrufari Construction Co. Inc.)*, 368 NLRB No. 40, slip op. at 13 (2019), enfd. 825 Fed.Appx. 51 (2d Cir. 2020) (noting the three situations the Board has cited as examples of intraunion discipline clashing directly with statutory policy interests and prohibitions incorporated in the Act.).

Here, the actions taken against Norris by Respondent were purely internal. They did not affect his employment relationship whatsoever, nor did they impair access to Board processes, or pertain to unacceptable methods of union coercion, such as physical violence. Also, at the time, Norris was not seeking access to the Board in order to file a decertification petition, nor was Respondent was not trying to compel Norris to engage in conduct that would violate a collective-bargaining or Section 8(B)(4) of the Act. Like the union vice-president in *OPEIU Local 251*, who was punished for publicizing matters pertaining to internal union finances (the disposition of a $58,000 settlement check), the charge and punishment against Norris involved his publicizing purely internal union matters, pertaining to the vote to donate $80,000 to the Uvalde charity, and Local 657's decision to donate $10,000 instead. Because the matters at issue are purely internal union matters, that bear no meaningful connection to Norris's relationship with his employer or the policies of the Act, Respondent's conduct did not violate Section 8(b)(1)(A).

The General Counsel asserts the "result of Perkins's internal charge would have impacted Norris' employment opportunities" if Perkins had been successful in having Norris expelled, in that Norris would no longer be on the Call List, but instead would be relegated to the Non-Members List. (GC. Br. at 28–29) However, as noted above, it is illegal for Respondent to discriminate against hiring hall registrants on the Non-Members List, or to give Call List

members a priority over individuals on the Non-Members List. So, whether Norris was on the Call List or the Non-Members List, his employment opportunities legally would be the same. And, the actual punishment meted out to Norris, an admonishment, did not deprive him of any employment opportunities, as he remained on the Call List.

The General Counsel also asserts that Perkins was motivated by Norris's protected conduct, such as his filing of NLRB charges, contractual grievances, and intra-union complaints, when he filed his internal charge against Norris, thereby making the conduct unlawful. (GC. Br. at 27–28) However, the General Counsel points to no contractual grievance, internal union charge, or NLRB charge, filed by Norris between the date of his July 11, 2022, email and July 21, 2022, when Perkins filed his internal charge with the Local 657 Executive Board. Indeed, the evidence shows that Norris's filing of NLRB charges, contractual grievances, and internal union charges, all occurred before his July 11, 2022 email. (GC. 20, 33–35, 37–42)

Here, even if Perkins held animus against Norris's protected conduct, the evidence shows that it was Norris's intervening actions involving his July 11, 2022, email, that predicated Perkins's charge. *A & T Mfg. Co.*, 276 NLRB 1183, 1184 (1985) (Respondent met its burden to show it would have discharged employee notwithstanding his protected activity, based upon employee's intervening conduct in disobeying workplace rule). The Teamsters International constitution requires every person who becomes a member to pledge that they "will not divulge to non-members the private business of the Union unless authorized to reveal the same." (GC. 23) And, Local 657's bylaws require that each member take an "oath of obligation" that prohibits them from disclosing the private business of the union to non-members, unless authorized to do so.[22] (GC. 23; J. 2) Norris's email involved the Union's internal decision regarding how much money to donate to the Uvalde charity, and the email was sent to non-members, either directly or via social media, in violation of the Union's rules.[23] Furthermore, the General Counsel has not shown that Perkins's decision to file a charge against Norris because of his July 11, 2022 email, or the Joint Council's admonishment of Norris for violating the Union's rules, was somehow pretext. Indeed, Perkins testified that that the Local 657 Executive Board has, in the past, been presented with charges filed by one member alleging another member violated their union oath of obligation. And, there is no evidence that others who were similarly situated to Norris received a less severe punishment from the Union. That Perkins may have derived satisfaction from being presented with an opportunity to file charges against Norris, "is legally inconsequential." *A & T Mfg. Co.*, 276 NLRB at 1184. Accordingly, for the reasons set forth above, I recommend that the allegations contained in Complaint paragraph 7(d) be dismissed.

CONCLUSIONS OF LAW

1. Respondent, International Brother of Teamsters, Local 657, is labor organization within the meaning of Section 2(5) of the Act.

[22] The General Counsel does not allege that these internal union rules are somehow unlawful.
[23] The testimony by Perkins and the finding of the Joint Council that Salgado was not a union member at the time of the email is unrebutted.

2. North Center Productions, Inc., Netflix Productions, Inc., and Eye Productions, Inc., are employers within the meaning of Section 2(2), (6), and (7) of the Act.

3. By operating an exclusive hiring hall while using a referral procedure that discriminated against employees who are not union members, Respondent has violated Sections 8(b)(1)(A) and 8(b)(2) of the Act.

4. By discriminatorily delaying the referral of Michael Johnson and Joe Olvera to employment because they engaged in activities protected by Section 7 of the Act, the Respondent has violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

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

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. Specifically, Respondent will be required to rescind its hiring hall rules which give preference to union members over non-members in referrals from its exclusive hiring hall. With respect to the finding that Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act by unlawfully delaying the referral of Johnson and Olvera to work on Spy Kids, the Union shall make them whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them. See *Operating Engineers Local 137 (Various Employers),* 317 NLRB 909, 924 (1995). "As the Board has stated in various occasions, backpay is based not on a private right but rather on a public right established to vindicate the policies of the Act," and the death of a discriminatee does not obviate the need for a backpay remedy which is intended to "reestablish the situation as it would have existed absent the unfair labor practices, thereby dissipating, removing, or avoiding the consequences of the illegal conduct." *Lauderdale Lakes Gen. Hosp.*, 239 NLRB 895, 895 (1978). Therefore, the make whole remedy regarding Olvera survived his death, and Respondent is ordered to pay Olvera's estate any loss of earnings and benefits Olvera may have suffered by reason of the discrimination taken against him. Id.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). If the event either Johnson or Olvera suffered any direct or foreseeable pecuniary harms as a result of Respondent's unlawful actions, Local 657 shall compensate Johnson, and Olvera' s estate, accordingly, as per the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enforcement denied on other grounds 102 F.4th 727 (5th Cir. 2024). Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra., compounded daily as prescribed in *Kentucky River Medical Center*, supra. Respondent shall also compensate Johnson and Olvera's estate for any adverse tax consequences of receiving a lump–sum backpay award. See *International Longshoremen's Association, Local 1413 (Ports America Terminals, Inc.),* 373 NLRB No. 79, slip op. at 3 (2024).

The General Counsel requests additional nontraditional remedies, such as training regarding the provisions of the National Labor Relations Act for hiring hall registrants, Respondent's agents and representatives, and a notice reading. (GC. Br. at 30–32) However, I find that the General Counsel has not shown that these additional measures are needed to remedy the effects of Respondent's unfair labor practices. See e.g., *Titan Health, LLC d/b/a Tweedleaf*, 372 NLRB No. 96, slip op. at 3 fn. 2 (2023) (General Counsel has not shown that nontraditional remedies are needed to remedy the effects of the unfair labor practices). I believe that the Board's traditional remedies, as ordered herein, will be sufficient to ensure Respondent, and its members, are aware of the unfair labor practice violations, and the requirement that Respondent operate its hiring hall in the future free from discrimination based upon union status. However, it is unclear from the record whether non-member hiring hall registrants would have the opportunity to view the Notice to Employees and Members, or otherwise become aware of the findings made herein. Therefore, Respondent will be required to mail, at its own expense, copies of the signed Notice to Employees and Members to all non-members who have registered for referral from Respondent's motion picture/television industry exclusive hiring hall at any time since March 13, 2022.[24] *Teamsters Local 104 (Blue Rodeo)*, 325 NLRB No. 121, slip op. at 3 (1998) (ordering a notice mailing to motion picture/television industry hiring hall registrants).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[25]

ORDER

The International Brotherhood of Teamsters, Local 657, its officers, agents, and representatives, shall:

1. Cease and desist from

   (a) Operating an exclusive hiring hall in a manner that discriminates against employees based upon membership status in a labor organization.

   (b) Delaying or otherwise not referring employees to employment in a timely manner because they engaged in activities protected under Section 7 of the Act.

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

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

[24] The first charge that specifically alleges Respondent operated its hiring hall in a discriminatory manner, in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act, was filed on September 12, 2022. (GC. 1(c)) Therefore, March 13, 2022, would be the last day covered by the six-month period as set forth in Section 10(b) of the Act.

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

(a) Rescind all exclusive hiring hall rules which provide preferences to union members over non-members, and operate the Union's exclusive hiring hall in a manner that does not discriminate against employees based upon membership status in a labor organization.

(b) Make whole Michael Johnson and the estate of Joe Olvera for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Compensate Michael Johnson and the estate of Joe Olvera for the adverse tax 's consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(d) File with the Regional Director for Region 16, within 21 days of the date the amount backpay is fixed, by agreement or Bord order or such additional time as the Regional Director may allow for good cause shown, a copy of the corresponding W-2 form(s) reflecting the backpay award to Michael Johnson and Joe Olvera.

(e) Within 14 days of the date of this Order, remove from its files any reference to the unlawful failure to timely refer Michael Johnson and Joe Olvera for work and within 3 days thereafter, notify Michael Johnson in writing that this has been done and that Respondent's unlawful actions will not be used against him in any way.

(f) Within 14 days after service by the Region, post at all physical locations within its jurisdiction, including union/meeting halls, hiring halls, and offices, copies of the attached notice marked "Appendix."[26] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, text message, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure

[26] If the Respondent's offices and meeting places are open and accessible to a substantial complement of employees and members, the notice must be posted within 14 days after service by the Region. If the offices and meeting places involved in these proceedings are closed or not accessible by a substantial complement of employees and members due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the office and meeting places reopen and are accessible by a substantial complement of employees and members. If, while closed or not accessible by a substantial complement of employees and members due to the pandemic, the Respondent is communicating with employees and members by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has closed its office or hiring hall, the Respondent shall duplicate and mail, at its own expense, a copy of the attached Notice to Employees and Members to anyone who has registered for referral from Respondent's motion picture/television industry exclusive hiring hall at any time since March 13, 2022.

(g) Within 14 days of service by the Region, the Respondent shall duplicate and mail, at its own expense, to all non-members who have registered for referral from Respondent's motion picture/television industry exclusive hiring hall at any time since March 13, 2022, a copy of the Notice to Employees and Members.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 10, 2025

John T. Giannopoulos
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT operate our motion picture and television industry exclusive hiring hall in a manner that discriminates against you based upon membership in a labor union.

WE WILL NOT delay or otherwise not refer you for employment in a timely manner from our exclusive hiring hall because you engaged in activities protected under Section 7 of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL operate our motion picture and television industry exclusive hiring hall in a manner that does not discriminate against employees on the basis of their membership in a labor union, and **WE WILL** rescind any exclusive hiring hall rules that give referral preferences based upon membership in a labor union.

WE WILL make Michael Johnson and the estate of Joe Olvera whole for any loss of earnings and other benefits suffered resulting from the discrimination against them, less any net interim earnings, plus interest, and **WE WILL** also make Michael Johnson and the estate of Joe Olvera whole for any other direct or foreseeable pecuniary harms suffered as a result of our adverse actions, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Michael Johnson and the estate of Joe Olvera for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director

may allow for good cause shown, a copy of the corresponding W-2 form(s) reflecting the backpay award to Michael Johnson and Joe Olvera.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful failure to timely dispatch Michael Johnson and Joe Olvera and **WE WILL**, within 3 days thereafter, notify Michael Johnson in writing that this has been done and that our unlawful actions will not be used against him in any way.

International Brother of Teamsters, Local 657
(Various Employers)

Dated _____ By _____
(Representative) (Title)

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

819 Taylor St Room 8A24; Fort Worth, TX 76102-6107
(817) 978-2921; Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/16-CB-294650 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (817) 978-2921.