International Longshoremen's Association Local 1694, AFL–CIO (GT USA Wilmington, LLC) ***and*** **Standford Fowler.** Case 04–CB–280810

April 7, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On November 24, 2023, Administrative Law Judge Susannah Merritt issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. In addition, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order.[3]

This case involves allegations that the Respondent, International Longshoremen's Association (ILA) Local 1694, made coercive statements to and unlawfully failed and refused to refer Charging Party Standford Fowler to employment through its exclusive hiring hall because of his dissident union activity. For the reasons stated by the judge, we adopt her findings that the Respondent violated Section 8(b)(1)(A) of the Act by threatening to refuse to refer Fowler, and Section 8(b)(1)(A) and (2) by failing and refusing to refer Fowler from March 31, 2021, to March 1, 2022, and on March 5, 2022.[4] However, for the reasons set forth below, we reverse the judge's dismissal of the allegation that the Respondent also violated Section 8(b)(1)(A) and (2) by continuously failing and refusing to refer Fowler since March 5, 2022.

I. BACKGROUND

As set forth more fully in the judge's decision, the Respondent is one of four ILA Locals operating an exclusive hiring hall at the Port of Wilmington in Delaware (the Port). Three of the Locals, including the Respondent, are signatories to a collective-bargaining agreement (CBA) known as the Blue Book with the multiemployer organization Ports of Delaware River Marine Trade Association (PMTA). These Locals are referred to collectively as the Deep-Sea Locals. By contrast, ILA Local 1694-1 was signatory to a CBA directly with GT USA,[5] the operator of the Port and a PMTA employer.

The issues here arise from Standford Fowler's desire to switch memberships from ILA Local 1694-1 to the Respondent in 2020 in order to access the Blue Book's better health benefits. The Respondent's president, William Ashe, told Fowler he could not switch memberships unless he went through the standard multiyear process of accruing sufficient hours through the Respondent's hiring hall to earn membership.[6] Fowler immediately began to do so.

On March 14, 2021, it was announced that Local 1694-1 would be dissolved due to chronic operational issues. Although all former members of Local 1694-1 would be merged with the Deep-Sea Locals, they would still work under the terms of the contract with GT USA. Thus, the merger would not give Fowler access to the Blue Book's better health benefits, and he would need to continue his efforts of gradually accruing hours through the Respondent's hiring hall. Members were advised to direct any questions to International Secretary Treasurer Stephen Knott.

On March 29, 2021, Fowler wrote a letter to Knott in response to the merger announcement, raising concerns

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

[2] We have amended the judge's conclusions of law and remedy consistent with our findings herein.

[3] We shall modify the judge's recommended Order to conform to our findings herein and to the Board's standard remedial language, and in accordance with our decision in *Vibe Consulting, LLC*, 374 NLRB No. 33 (2026). We shall substitute a new notice to conform to the Order as modified.

[4] In adopting the judge's finding that the Respondent unlawfully removed Fowler from the Port of Wilmington on March 5, 2022, we note additional evidence of animus in the record. First, there is additional evidence supporting the judge's finding of suspicious timing between Fowler's protected activity and the Respondent's removal of him from the Port. Specifically, we note that Fowler engaged in more recent protected dissident union activity when he wrote a second letter to the International complaining about his placement in Local 1884 on April 15, 2021, and when he filed an unfair labor practice charge against the Respondent and its president William Ashe on August 2, 2021. Second, the Respondent committed contemporaneous unfair labor practices as found by the judge and adopted herein.

[5] GT USA is also known as Gulftainer in its capacity as a PMTA employer. We refer to it as GT USA throughout for clarity.

[6] Fowler was considered a Registered Casual by the Respondent at this time. A Registered Casual is an individual who has registered with the PMTA to work through the hiring hall but is not yet a member of the Local. A Registered Casual must work in the Respondent's jurisdiction for at least 1300 hours for 2 consecutive years to become a Secondary Workforce member. To become a Basic Unit member, that individual must work at least 1300 hours as a Secondary Workforce member for 3 consecutive years.

over the merger's effect on his ability to continue accruing his hours with the Respondent and noting that Ashe had rejected his request to directly switch locals in 2020. On March 31, 2021, Knott forwarded this letter directly to Ashe, asking him to investigate further.[7]

In early April 2021, after receiving the letter, Ashe and the Respondent's agents James Glandton and Eric Dorsey confronted Fowler at the Respondent's hiring hall, telling Fowler he should never write letters to the International and that they would no longer let him come and work through their hiring hall. From that point on, Ashe interfered with Fowler's attempts to seek work out of the Respondent's hiring hall on about 20 occasions, by specifically blocking PMTA employers' foremen from selecting Fowler for work. As of March 2021, Fowler still needed 300 additional hours with the Respondent that year to obtain the seniority necessary to become a member. He therefore continued to seek work through the Respondent's hiring hall, but he strategically sought to avoid Ashe while doing so.

On August 2, 2021, Fowler filed a charge with the Board. Fowler claimed that Ashe was preventing him from seeking work through the Respondent's hiring hall in retaliation for having raised questions about the merger and about Ashe's rejection of his request to switch locals. On February 22, 2022,[8] Ashe wrote Fowler a letter stating that he was permitted to seek employment through the Respondent's hiring hall. Fowler received the letter sometime around March 1.

On March 3, Fowler returned to the Respondent's hiring hall and received a referral for a job working for GT USA. While on the job, Fowler's vehicle hit a ditch and could not be removed on its own. In response to this accident, GT USA notified the Respondent that Fowler was on administrative suspension from working any jobs with GT USA until an investigation into the accident was completed. At the time of the accident, Fowler took a drug test, which he passed. He was not notified of his administrative suspension by either the Respondent or GT USA. The administrative suspension from GT USA did not bar Fowler from working jobs with other PMTA employers.

On March 5, Fowler returned to the Respondent's hiring hall and received a referral for a job with another PMTA employer, DRS. The Respondent's vice president Michael Miller approached Fowler while he was going to the job and asked for whom he was working. Fowler responded that he was working for DRS. Despite confirming this with the hiring manager, Miller called security, stating that Fowler was "barred from the Port," and he had Fowler escorted off the Port.

On about March 8 or 9, Fowler went to the hiring hall for his former local, known as the "Hut." There he met with GT USA's Chief Operating Officer (COO) Mike Hall, who told Fowler that he had been suspended. Fowler left the Port without seeking jobs from any other employers or visiting the Respondent's hiring hall. Since then, he has not sought any work at the Port.

On March 14, Fowler filed a grievance with ILA Local 1884, the Deep-Sea Local into which he had been merged, and with the Respondent regarding his March 5 removal from the Port. In the grievance, Fowler asserted that Ashe and Hall were conspiring to prevent him from working, that Ashe specifically was trying to get rid of him, and that he was being forced to go to Philadelphia to work. The Respondent's business representative, Gary Lewis, purposely withheld the grievance from the rest of the Respondent's administrators. Fowler reached out to Lewis about the grievance, but Lewis never returned any of his calls. When Fowler reached out to Local 1884, its president stated that he had spoken to Ashe but that he was not getting anywhere with him. At this time, Fowler still had not received any formal notification from the Respondent or GT USA about the nature of his suspension.

On May 10, the Respondent's recording secretary Kevin Cooper informally reached out to Fowler by text to inform him that the Respondent had just received his grievance, and he asked Fowler to participate in a grievance hearing on May 13. Fowler declined, pointing out that the time for processing the grievance had passed, and he accused the Respondent of discriminating against him. At that point, Fowler had filed an amended charge with the Board.

Fowler's administrative suspension from GT USA remained in place at the time of the hearing, but he was technically free to seek referrals from any of the Deep-Sea Locals' hiring halls with the other PMTA employers. However, the Respondent has never communicated with Fowler regarding the suspension's effect on his ability to seek referrals through its hiring hall.

As noted above, the judge found, and we agree, that the Respondent violated Section 8(b)(1)(A) when its agents threatened Fowler in early April 2021, and violated Section 8(b)(1)(A) and (2) by refusing to refer Fowler from March 31, 2021, to March 1, 2022, and by refusing to refer

[7] On April 12, 2021, Fowler was assigned to ILA Local 1884, which was not his preferred local. On April 15, 2021, Fowler wrote another letter to Knott complaining about his assignment. Knott responded that the locals had unilateral authority to merge or consolidate and that the decision was therefore not appealable.

[8] All subsequent dates refer to 2022 unless otherwise indicated.

him on March 5, 2022.[9] However, the judge dismissed the complaint allegation that the Respondent unlawfully refused to refer Fowler after March 5, 2022. In doing so, the judge found that Fowler chose to stop seeking work through the Respondent's hiring hall since March 5, and accordingly the Respondent did not unlawfully refuse to refer him. The judge rejected the General Counsel's contention that the Respondent's unlawful actions on March 5 reasonably drove Fowler away. Central to the judge's finding were three factual considerations: (1) after the March 5 incident, Fowler returned to the Hut, demonstrating that he did not believe he was barred from the Port; (2) the last conversation Fowler had about his suspension from work was with GT USA COO Hall, who is not an agent of the Respondent; and (3) Fowler's choice not to participate in the Respondent's belated grievance proceeding demonstrated his intent not to return to work at the Port.

The General Counsel excepts, arguing that Fowler stopped seeking work through the Respondent because the Respondent's unlawful actions made it futile to do so, thereby establishing the refusal-to-refer violation since March 5. For the reasons set forth below, we agree.

II. DISCUSSION

The Act does not require an individual to perform a futile act. See *Pipeline Local Union No. 38 (Hancock-Northwest, J.V.)*, 247 NLRB 1250, 1251 fn. 7 (1980), enfd. 673 F.2d 552 (D.C. Cir. 1981); see also *Asbestos Workers, Local 5 (Insulation Specialties Corp.)*, 191 NLRB 220, 226 (1971), enfd. 464 F.2d 1394 (9th Cir. 1972). Thus, if a respondent's unlawful actions in the operation of an exclusive hiring hall cause an applicant to reasonably believe that seeking work out of the hiring hall would be futile, the Board will find a refusal to refer the applicant, even absent a specific referral request. See, e.g., *Iron Workers, Local 433 (Steel Fabricators Assoc.)*, 341 NLRB 523, 525 (2004) (in finding a refusal-to-refer violation, it was "irrelevant that [the applicant] did not attempt to register for referrals . . . because any such attempt would have been futile" insofar as the respondent had been unlawfully applying the applicant's dues payments toward an outstanding fine), enfd. in relevant part 2007 WL 186293 (9th Cir. 2007).

Here, the record shows that any attempt by Fowler to seek referrals through the Respondent's hiring hall after March 5 would have been futile. The Respondent had unlawfully refused to refer Fowler for about a year, and after allowing him back to the hiring hall it significantly escalated matters only a few days later by unlawfully removing Fowler from his job with DRS on March 5 and telling him he was banned from the Port. Fowler then attempted to bypass the Respondent's hiring hall to seek work directly from GT USA at the Hut. GT USA's hiring manager vaguely told Fowler he was "barred" from the work and offered no clarity as to why. After Fowler's attempt to circumvent Ashe and Miller to secure work at the Port was rebuffed, he reasonably believed the Respondent would thwart any further attempts to seek work at the Port, thereby frustrating his ability to earn a consistent income, and reasonably decided to seek work in Philadelphia instead.[10] See *Pipeline Local Union No. 38*, supra, 247 NLRB at 1250 (refusal-to-refer violation found even though applicant stopped seeking referrals from the hiring hall because the respondent threatened to retaliate against the applicant for supporting political rivals and had discriminatorily caused him to be discharged from a job).[11] Based on the Respondent's prior unlawful conduct, then, Fowler had a reasonable basis to believe, after March 5, that attempting to obtain job referrals from the Respondent's hiring hall would be futile.[12]

In dismissing this allegation, the judge made inferences based on erroneous factual findings. First, she inferred that Fowler did not believe he was banned from the Port after the March 5 incident because he returned to the Hut, which she stated is on Port property. However, the Hut, like all the other hiring halls, is not on Port property; rather, it is near the Port's entrance. Second, the judge emphasized that the last conversation Fowler had about his

[9] In analyzing the alleged violations of Sec. 8(b)(1)(A) and (2) of the Act, the judge applied both the *Wright Line* and duty-of-fair representation frameworks. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). We note that that there are no exceptions to the judge's application of the *Wright Line* framework.

[10] Notably, after the Respondent told Fowler that he was banned from the Port, working out of a different port altogether was the only way Fowler could ensure he would have consistent work. This is because an applicant must be physically present in the hiring hall in the morning to secure a job. Thus, if Fowler obtained jobs at the Port but then was kicked off the site unpredictably, as he was on March 5, there would be no other reliable source of work for him. He would not be able to go to the Port of Philadelphia at that point, for example, because it would be too late to get work for the day.

[11] By contrast, the Board additionally dismissed allegations in this case concerning the refusal to refer two other employees, finding no indication of futility in the absence of evidence of any threats against them or of unlawful refusals to refer them. Id. at 1251, 1262–1263.

[12] Chairman Murphy agrees with his colleagues that it would have been futile for Fowler to continue seeking work at the Port through the Respondent's hiring hall after March 5. In so finding, he relies on the analysis set forth above and finds it unnecessary to rely on whether "the Hut," a separate hiring hall for work under former Local 1694-1's jurisdiction, was located on Port property; whether Fowler believed himself banned from Port property; or Fowler's last conversation being with a GT USA agent and not the Respondent.

suspension from work was with GT USA COO Hall, who is not an agent of the Respondent, and she inferred it was this conversation that ultimately discouraged Fowler. However, in his March 14 grievance, Fowler explicitly explained his desire to continue working through the Respondent's hiring hall, but he stated that the Respondent left him no choice but to seek work out of the Philadelphia port instead. In relevant part, Fowler's grievance stated:

> I was banned from working from March 3rd to this present moment with no explanation .... [H]ead of security . . . stated I needed to contact Mike Hall and the vice president of the ILA, which is William Ashe, who gave him the authority to bar me from the port and turn off my twic card .... Mr. William Ashe has been barring me since March 2021, from working with GT-USA, forcing me to go to Philadelphia to seek a job, he is who I have a case against at the NLRB, so this is clear retaliation and discrimination, with ulterior motives.

This evidence amply demonstrates that by March 5, the Respondent's conduct reasonably led Fowler to believe that any attempt to seek work through the Respondent would be futile.

Additionally, the judge did not address the Respondent's role in fostering the misunderstanding Fowler had regarding his suspension and how that contributed to Fowler's reasonable belief that any attempts to seek referrals from the hiring hall would be futile. Instead, the judge focused her attention on the Respondent's lack of authority to ban Fowler from the Port and on the fact that Fowler stopped seeking work at the Port after speaking to GT USA COO Hall. However, the Respondent's significant contribution to Fowler's lack of clarity regarding the terms of his suspension reasonably created uncertainty about Fowler's ability to work without continued interference from the Respondent. Indeed, the Respondent never notified Fowler of his administrative suspension from GT USA in the first place, and then, without providing an explanation, incorrectly told Fowler that he was banned from the Port. See *Construction & General Laborers, Local 304 (Associated General Contractors of California, Inc.)*, 265 NLRB 602, 602 (1982) (finding a refusal-to-refer violation where the respondent's failure to clarify a misunderstanding regarding its inclusion of an illegal waiver provision in its registration forms would foreseeably discourage an applicant from seeking work through its hiring hall). Thus, we find that the lack of any clarification in these circumstances had the foreseeable effect of creating a misunderstanding about the nature of Fowler's suspension, regardless of whether the Respondent could, in fact, ban Fowler from the Port.

Finally, in reversing the judge's dismissal of this allegation, we specifically disavow her suggestion that Fowler's choice to pursue an unfair labor practice charge, rather than participate in the Respondent's untimely grievance hearing, demonstrated that Fowler had decided to cease attempting to obtain work through the Respondent's hiring hall. There simply is no basis to suggest that the act of filing an unfair labor practice charge warrants an inference about ceasing the pursuit of work. Indeed, any such inference would be contrary to the purposes of the Act.

In sum, we find that the General Counsel demonstrated that the Respondent, through its unlawful conduct and its neglect in clarifying the misunderstanding around Fowler's suspension, conveyed that it was futile for Fowler to continue seeking work through its hiring hall since March 5, 2022. Accordingly, we reverse the judge's dismissal of this allegation and find that the Respondent violated Section 8(b)(1)(A) and (2) by unlawfully refusing to refer Fowler for work since March 5, 2022.

AMENDED CONCLUSIONS OF LAW

Insert the following as Conclusions of Law 8 and 9 and renumber the subsequent paragraphs

> "8. Respondent 1694 breached its duty of fair representation when it discriminatorily failed or refused to refer Standford Fowler to employment with the PMTA employers because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership with Respondent 1694 since March 5, 2022.
>
> 9. Respondent 1694 discriminatorily failed or refused to refer Standford Fowler to employment with the PMTA employers because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership with Respondent 1694 since March 5, 2022."

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order the Respondent to cease and desist from engaging in such conduct and, as explained in the remedy section of the judge's decision, to take certain affirmative action designed to effectuate the policies of the Act. However, we amend the remedy in four respects.

First, having found that the Respondent violated Section 8(b)(1)(A) and (2) by unlawfully failing and refusing to refer Standford Fowler to employment with PMTA employers since March 5, 2022, we shall order the Respondent to make Fowler whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination against him. 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).

Second, in accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate Fowler for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful failure and refusal to refer him from March 1, 2021 through March 1, 2022, on March 5, 2022, and since March 5, 2022, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[13] 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.

Third, because the Respondent has never been an employer of Fowler, it shall not be required to file a report with the Regional Director for Region 4 allocating backpay to the appropriate calendar years. See *Food & Commercial Workers (Awrey Bakeries, LLC)*, 360 NLRB 48, 48 (2013).

Fourth, in addition to the Board's standard remedies, we find that a reading of the remedial notice is warranted here in light of the Respondent's numerous and serious violations of the Act, which have persisted for years and have been committed by the Respondent's high-ranking officials, including its president William Ashe, against Fowler in a highly public manner. See *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 2 (2022); *Everport Terminal Services, Inc*., 370 NLRB No. 28, slip op. at 5 (2020), enf. denied on other grounds 47 F.4th 782 (D.C. Cir. 2022); *Operating Engineers Local Union 450*, 267 NLRB 775, 778, 811 (1983). Specifically, we shall order the Respondent to hold a meeting or meetings in the customary manner, which will be scheduled to ensure the widest possible attendance of employees and members, at which time the Respondent or, at the Respondent's option, a Board agent, shall read the notice aloud to employees and members. Such a public reading of the notice will serve to reassure employees and members that the Respondent and its officials are bound by the Act's requirements. See *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed.Appx. 32 (2d Cir. 2008).

ORDER

The National Labor Relations Board orders that the Respondent, International Longshoremen's Association, Local 1694, Wilmington, Delaware, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees that it will refuse to refer them from its exclusive hiring hall because they engaged in dissident union activity.

(b) Failing and refusing to refer individuals from its exclusive hiring hall for arbitrary or discriminatory reasons.

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

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

(a) Within 14 days from the date of this Order, notify Standford Fowler in writing that it will make employment referrals available to him in their rightful order of priority.

(b) Make Standford Fowler whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of unlawful failure to refer him for employment from its exclusive hiring hall, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Within 14 days from the date of this Order, remove from its files, and ask Ports of Delaware River Trade Association (PMTA) member-employers, in writing, to remove from their files, any reference to the unlawful failure to refer Standford Fowler, and within 3 days thereafter, notify him in writing that this has been done and that the failure to refer will not be used against him in any way.

(d) Compensate Standford Fowler for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

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

(f) Within 14 days after service by the Region, post at its hiring hall in Wilmington, Delaware, and all other places where notices to members are customarily posted,

[13] As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Chairman Murphy and Member Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*.

copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 4, 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 are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Hold a meeting or meetings in the customary manner, which will be scheduled to ensure the widest possible attendance of employees and members, at which the attached notice marked "Appendix" will be read to employees and members by a high-ranking official of the Respondent in the presence of a Board Agent if the Region so desires or, at the Respondent's option, a Board agent in the presence of a high-ranking official of the Respondent.

(h) Within 14 days after service by the Region, deliver to the Regional Director for Region 4 signed copies of the notice in sufficient number for posting by employer-members of the PMTA and by any other employers that use the Respondent's exclusive hiring hall, if they are willing, at all places where their notices to employees are customarily posted.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 4 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. April 7, 2026

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James R. Murphy, Chairman

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David M. Prouty, Member

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives 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 threaten to refuse to refer you from our exclusive hiring hall because you engaged in dissident union activity.

WE WILL NOT fail and refuse to refer you from our exclusive hiring hall for arbitrary or discriminatory reasons.

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

WE WILL, within 14 days from the date of the Board's Order, notify Stanford Fowler in writing that we will make employment referrals available to him in their rightful order of priority.

WE WILL make Stanford Fowler whole for any loss of earnings and other benefits suffered as a result of our failure to refer him for employment from our exclusive hiring hall less any net interim earnings, plus interest, and WE WILL also make him whole for any other direct or foreseeable pecuniary harms suffered as a result of the failure to refer, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Stanford Fowler for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask Ports of Delaware River Trade Association (PMTA) member-employers, in writing, to remove from their files, any reference to our unlawful failure to refer Stanford Fowler, and WE WILL, within 3 days thereafter, notify him in writing that this has

[14] 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."

been done and that the failure to refer will not be used against him in any way.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1694, AFL–CIO

The Board's decision can be found at https://www.nlrb.gov/case/04-CB-280810 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.

David Rodriguez, Esq. and *Peter Hyndman, Esq.,* for the General Counsel.
Lance Geren, Esq. and *Daniel Keenan, Esq.,* for the Respondent 1694.
Stanford Fowler, for the Charging Party.

DECISION

STATEMENT OF THE CASE

SUSANNAH MERRITT, Administrative Law Judge. I heard this case on July 25 and 26, 2023, in Philadelphia, Pennsylvania, following the issuance of a complaint and notice of hearing (the complaint) by the Regional Director for Region 4 of the National Labor Relations Board on March 17, 2023. The complaint was based on an original, amended and second amended unfair labor practice charge filed by Charging Party Standford Fowler (Charging Party or Fowler).

The complaint alleges that the International Longshoremen's Association, Local 1694, AFL–CIO (Respondent 1694) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) when it made coercive statements to Fowler and failed and refused to refer him to employment due to his dissident union activity.

On September 8, 2023, posthearing briefs were filed by the parties and have been carefully considered. On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent 1694, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

It is undisputed that GT USA Wilmington, LLC (GT USA), is a limited liability company with an office and a place of business in Wilmington, Delaware, and is engaged in the business of loading and unloading freight and providing stevedoring services at the port of Wilmington. In conducting its operations during the 12-month period ending March 31, 2023, a representative period, GT USA has purchased and received at its Wilmington facility goods valued in excess of $50,000 directly from points located outside of the State of Delaware. Accordingly, I find that GT USA is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties stipulated, and I find, that Respondent 1694 and International Longshoremen's Association, AFL–CIO (ILA), are labor organizations within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

This case involves four ILA locals operating out of the Port of Wilmington (the Port). Three of the locals, including Respondent 1694, work under a collective bargaining agreement with a multi-employer organization called the Ports of Delaware River Marine Trade Association (PMTA). The fourth local, the local to which Charging Party Fowler belonged, worked under a separate contract with a public state agency. This case centers around Respondent 1694's efforts to block Fowler from working out of Respondent 1694's Hiring Hall after Fowler criticized Respondent 1694's President William Ashe (President Ashe or Ashe) and raised questions about how the ILA and its locals were operating at the Port. Initially, a little background of how the locals operate within the Port will be helpful.

B. The Deep-Sea Locals

Respondent 1694 together with ILA Locals 1883 and 1884 (collectively the Deep-Sea Locals) represent employees working under a collective-bargaining agreement at the Port with PMTA. PMTA is an organization composed of various employers engaged in stevedoring and related operations in ports of Wilmington, Delaware, and Philadelphia, Pennsylvania. (Tr. at 51.)

The collective-bargaining agreement between PMTA and the Deep-Sea Locals is referred to as the "Blue Book."[2] The most recent version of the Blue Book is effective from October 1, 2018, through September 30, 2024. In addition, the Deep-Sea Locals are also covered by a Master Contract negotiated by ILA and the United States Maritime Exchange (USMX). (Tr. at 240,

[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh. __" for General Counsel's Exhibits; "R Exh. __" for Respondent 1694's Exhibits; "GC Br. at __" for the General Counsel's posthearing brief; and "R Br. at __" for the Respondent 1694's posthearing brief. 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.

[2] Unlike a traditional collective-bargaining agreement, the Blue Book is made up of a collective-bargaining agreement dating back to 1986, which has been supplemented and modified over the years through a series of memoranda, addendums, and side agreements, which are attached and have become part of the agreement. (GC Exh. 23.)

292; GC Exh. 23.)

Each of the Deep-Sea Locals represents a separate craft at the Port. Respondent 1694 represents traditional longshore workers, who load and unload ships and move cargo throughout the Port and warehouses. Local 1883 represents clerks and checkers, who are responsible for counting and documenting the cargo that comes off the ship. Local 1884 represents the lashers, who repair palletized cargo that comes off the ships and tie down or lash cargo for marine transport. (Tr. at 240, 298–300.)

C. Local 1694-1

The fourth local involved in this case, Local 1694-1 represented employees performing warehouse operations and facilities maintenance out of the Port until March 2021. Charging Party Fowler became a member of 1694-1 in 2005. Local 1694-1 workers had their own separate hiring hall which was located on the Port. That hiring hall was referred to colloquially as "the Hut." Local 1694-1 was not a party to either the Blue Book or the Master Contract. Instead, as discussed above, it had a collective-bargaining relationship with a public state agency called Diamond State Port Corporation (DSPC). Local 1694-1 and DSPC had a series of collective-bargaining agreements over the years. (Tr. at 240–243, 300–301, 315, 50, 52; GC Exh. 2.)

In October 2018, DSPC leased the Port to GT USA (also known as Gulftainer), a private stevedoring company. At that time, GT USA assumed responsibility for all operations at the Port and assumed and extended the collective-bargaining agreement between Local 1694-1 and DSPC. (Tr. at 49–50; GC Exh. 2; GC Exh. 31 at Exh. A.) GT USA is also a signatory to the Blue Book, and as such, has a separate collective-bargaining relationship with the Deep-Sea Locals. (Tr. at 239–240.) As will be described in more detail below, Local 1694-1 was dissolved and merged into the Deep-Sea Locals in March 2021.

D. Respondent 1694's Hiring Hall Operations

Respondent 1694's hiring hall (the Hiring Hall) is located approximately 3 miles off the Port. (Tr. at 308, 315.) Inside of the Hiring Hall is a PMTA-run dispatch office. (Tr. at 308.) The Blue Book contains the following provision regarding the source of employees for PMTA employers:

> The parties agree that the basic unit of employees shall be frozen to include only those eligible for registration as of October 1, 1980; that the moratorium extend for the term of the new agreement, October 1, 1986 to September 30, 1989 that any further reopening of the register shall be by mutual agreement of the parties; that all replacements and fill-ins shall be hired exclusively from the registered work force and that no other employees shall be hired as replacements or fill-ins, and that all replacements or fill-ins shall be hired through the Hiring Center, when the Hiring Center is open. (GC Exh. 23 at 128, internal pagination.)

This language is repeated in a memorandum of agreement, which is also part of the Blue Book. All PMTA hiring is done at the Hiring Hall when it is open. A PMTA employer cannot hire employees directly off the street without going through the hiring hall first. All non-managerial GT USA employees at the Port are represented by ILA. (Tr. at 339, 247, GC Exh. 23.)

There are three general categories of workers who can seek work through the Hiring Hall. In reverse seniority order they are Registered Casuals, Secondary Workforce, and Basic Unit employees. Employees who first enter the longshore industry are considered casual employees. A Registered Casual is somebody who has registered with PMTA to work through the Hiring Hall and can work under Respondent 1694's jurisdiction but is not yet a member of that Local. (Tr. at 61.) Upon completing the process, the applicant receives a PMTA-ILA card. In order to move up in seniority to become a Secondary Workforce employee, a Registered Casual must have worked in the Local 1694's jurisdiction for at least 1,300 hours for two consecutive years.[3] In order for a Secondary Workforce employee to become a Basic Unit member, that individual must work at least 1300 hours as a Secondary Unit member for 3 consecutive years. Basic Unit members have the most seniority and have priority for work out of the Hiring Hall.

E. Daily Operations of the Hiring Hall

Each day at 3:30 p.m., the PMTA employers notify the dispatch office at the Hiring Hall and the ILA leadership of how much labor they anticipate needing the following day. PMTA employers do not request specific employees by name, rather they merely list out which ships will be worked, and the number and types of workers needed. (Tr. at 244, 245–246, 307.) Each morning, the PMTA employer's foremen (commonly referred to as "gang bosses") use these lists for selecting workers for hire out of the Hiring Hall for their jobs. (Tr. at 57–58, 308, 340, 345.) In doing so, the gang bosses must adhere to established seniority policies.[4]

All workers must "badge in" at the Hiring Hall in order to get a job through Respondent 1694. When a worker arrives at the Hiring Hall they present their PMTA-ILA card to the PMTA dispatcher, who provides the worker with a yellow "registration slip" that shows the date and time when the worker badged in. These slips are used to track the individual's hours. (Tr. at 53–55, 63–64, GC Exh. 4.)

Once the employee has a yellow registration slip, they wait for the gang bosses to fill their work loads. Basic Unit and Secondary Workforce members have priority and can wait inside the hall, but Registered Casuals generally have to wait outside, but Registered Casuals are sometimes allowed inside the hall. The gang bosses will then announce each opening they have and fill it with the most senior employee who has the required qualifications. (Tr. at 63–64, 317, 309.)

When a gang boss requires additional hires and the supply of Basic Unit and Secondary Workforce employees is exhausted,

[3] PMTA and Respondent 1694 track these yearly hours from October 1, through September 30, as opposed to the calendar year. (Tr. at 71.)

[4] Gang bosses using the Hiring Hall must hire workers in the following order: (1) Respondent 1694 Basic Unit employees by seniority date; (2) Registered Basic Unit members from sister Locals 1883 and 1884; (3) Registered Basic Unit members from all other Locals; (4) All Registered Secondary Workforce employees; (5) All Registered Secondary Workforce, including new Basic Unit members from all Locals except Respondent 1694; and finally (6) Registered Casuals and all others. (R Exh. 6.; Tr. at 340, 311–312.)

they will go outside the hall and seek Registered Casuals for hire. With regard to Registered Casuals, a gang boss has discretion to select (or cherry pick) whichever employees they choose without regard to seniority as long as they have the right certifications. (Tr. at 310, 63–64, 165.)

Respondent 1694's officers monitor the hire each day. If the gang boss makes a mistake, the monitoring officer will alert the gang boss, who will review and correct the hire as necessary. Respondent 1694's union representative Eric Dorsey (Dorsey) has served as a monitoring officer for 15 years and testified (unrebutted) that gang bosses make a mistake about 20 percent of the time. (Tr. at 287–288, 311–312, 245.)

F. Craft Interchange Agreement

One aspect of the Blue Book is the Craft Interchange Agreement, which provides that an individual can only seek work in another craft after they have unsuccessfully sought work in their own craft. (GC Exh. 23 at sec. 7, p. 4; GC Exh. 25.) Respondent 1694's representative Dorsey testified that "craft" is just another word for "local". (Tr. at 344.) For example, under the Craft Interchange Agreement, a member of Local 1884 can only seek work in Local 1694's jurisdiction after unsuccessfully seeking work in the jurisdiction of Local 1884. (Tr. at 314–315.) Local 1694-1 was not a signatory to the Blue Book, and there was no analogous provision in its collective-bargaining agreement during the relevant time period.[5] (Tr. at 52, 240, 242–243; GC Exh. 2; GC Exh. 23.) Dorsey confirmed at hearing that the Blue Book never applied to the Local 1694-1 warehouse workers. (Tr. at 332–333.)

G. Fowler's History of Dissident Union Activity

Throughout his time working under the jurisdiction of Local 1694-1, Fowler was a vocal and prominent dissident member of the local. In 2016 or 2017, Local 1694-1 was placed into a trusteeship because of concerns raised over its operations. President Ashe and Vice President of the Atlantic Coast District of the ILA Brian Witiw (Witiw) were designated as trustees for Local 1694-1 at this time. One of the major issues raised at the time involved Local 1694-1's seniority system. (Tr. at 240, 158–159.)

During the trusteeship, President Ashe and Witiw negotiated a new collective-bargaining agreement that sought to cure some of the seniority issues that had been plaguing Local 1694-1. (GC Exh. 2; R Exh. 1 at 3.) Fowler felt that the terms of the proposed collective-bargaining agreement negotiated by Ashe and Witiw did not cure the seniority issues and placed some members in a worse position than under the previous contract. (Tr. at 77; GC Exh. 5.) Sometime in January 2018, Fowler handwrote a letter addressed to ILA President Harold Daggett criticizing how Ashe and Witiw had handled the contract negotiations and the seniority issue.[6] Fowler successfully solicited about a dozen other members to sign the letter. At an ILA Trustee meeting in January 2018, Fowler handed this letter directly to Ashe and Respondent 1694's Counsel Lance Geren. (GC Exh. 28; Tr. at 77, 79.) As a result of this letter and a grievance on the same issue filed by Fowler on February 2, 2018, there was a grievance hearing on November 7, 2018, at which Fowler testified. Ashe, who is vice president of ILA as well as president of Respondent 1694, was also present at the hearing. The hearing resulted in a written decision finding ongoing issues with the implementation of a new seniority list for Local 1694-1, even after the local had exited the trusteeship. (GC Exh. 5; Tr. at 80–81.)

H. Fowler Starts Earning Hours with Respondent 1694

Fowler worked exclusively with Local 1694-1 from approximately 2005 through 2018. Sometime in early 2018, Fowler became a Registered Casual with Respondent 1694, but he only started to regularly work in Respondent 1694's jurisdiction in 2020. (Tr. At 61, 70–71, 155–156; GC Exh. 7.) Fowler was interested in accumulating hours of work in Respondent 1694's jurisdiction, so that he could eventually achieve membership.

Fowler testified that around the time that he started regularly registering for work at the Hiring Hall, he approached Ashe and expressed that he would like to switch from Local 1694-1 to Respondent 1694. Fowler told Ashe that he had read the ILA Constitution and understood that all he had to do in order to switch from one ILA Local to another, was to go to the ILA Treasurer's office and get a ticket and take it to the Local he wanted to switch to. Ashe responded, "No, you can't do that. Not going to happen." Fowler then asked, "Sir, why is that?" Ashe responded, "Because we have a clause in our Local that state that you cannot switch." Fowler next asked Ashe if the clause superseded the ILA Constitution, and Ashe responded that it did not. Fowler then asked Ashe, "What do you want me to do to make my hours," to which Ashe responded, "You suppose to stand up outside like everybody else in the cold until you make your 1300 hours." (Tr. at 103.) Fowler let the issue go and continued to work on accumulating hours as a Registered Casual with Respondent 1694, rather than continuing to argue with Ashe on the matter. (GC Exh. 7.)

Ashe was clearly perturbed by Fowler challenging him regarding Fowler's ability to switch Locals. Sometime in January 2021, Fowler went into the Hiring Hall to badge his card in with the PMTA dispatcher. Once Fowler was badged in and he started to leave the hall, he heard Ashe say, "[W]e don't want you in our

[5] The collective-bargaining agreement that Local 1694-1 had with DSCP which was adopted by GT USA only provides: "In the event an employee turns down work for which they are qualified, the employee shall move to the bottom on the hiring list and shall not be eligible for hire that day until the remainder of the seniority list is exhausted." (GC Exh. 31 at Exh. C.) There is no discussion about craft or where the employee is required to seek work first. Rather the language focuses on an employee who is actually offered work and turns it down, which is clearly different from dictating where or in what craft the employee must seek work.

[6] This was not the first or only time that Fowler had complained about how the ILA and its Locals were operating at the Port. The record contains several examples of Fowler's complaints which were sent directly to the ILA. For example: on May 9, 2019, Fowler wrote a letter to the ILA complaining about Local 1694-1 leadership (R Exh. 1); on December 7, 2019, Fowler wrote a letter to ILA complaining about proposed collective bargaining agreement for Local 1694-1 (R Exh. 2); on March 29, 2021, Fowler wrote a letter to the ILA complaining about the merger of Local 1694-1 into the Deep-Sea Locals) (GC Exh. 7); and on April 15, 2021, Fowler wrote a letter objecting to being placed into Local 1884 as part of the merger. (GC Exh. 10.)

Local. We don't need you in our Local." When Fowler turned around toward Ashe, Ashe repeated: "We don't need you in our Local." Fowler responded to Ashe saying, "You—you're all like my brothers," and then Fowler left the hall. (Tr. at 72–73.)

I. Dissolution of Local 1694-1

As time wore on, Local 1694-1 continued to be plagued by member dissatisfaction, and on March 11, 2021, the ILA resolved to dissolve Local 1694-1 and merge the warehouse employees into separate units within the Deep-Sea Locals. (GC Exh. 31 at Exh. D.) The merger agreement sets forth that even though the members of Local 1694-1 would be merged into the three Deep-Sea Locals, the warehouse employees would still fall under the same contract that they did prior to the merger. The merger agreement sets forth:

> As of the effective date of the merger, Local 1694, Local 1883, and Local 1884 shall assume the collective bargaining duties and responsibilities for all bargaining units represented by Local 1694-1 prior to the Merger, honoring the terms of any existing and extant collective bargaining agreement covering such units assuming all representational obligations imposed by applicable law. (GC Exh. 31 at Exh. D.)

The merger also clarified that the Local 1694-1 members would retain their seniority for their jurisdiction in the Port (i.e., warehouse work). Thus, even though Local 1694-1 was being merged into the Deep-Sea Locals, they would still fall under the same collective bargaining agreement as before the merger and they would retain seniority under their jurisdiction. In a position statement submitted to the Region on September 27, 2021, Respondent 1694 further clarifies that the hiring procedures out of the Hiring Hall had not changed for the warehouse employees, but would remain the same as before the merger took place:

> Prior to that merger, Locals 1694, 1883, 1884, and 1694-1 had separate hiring practices and procedures, all of which were joint hiring procedures jointly administered by respective employers. The existence of distinct hiring practices and procedures has remained consistent and was not affected by the merger. *Instead, post-merger hiring practices for each of the bargaining units has continued without interruption or change.* (GC Exh. 31 at 2; emphasis mine.)

The position statement goes on to clarify: "The hiring procedures and seniority rules applicable to members of the now dissolved Local 1694-1 are contained in the collective bargaining agreement between Local 1694-1 and DSPC and agreed to be honored by GT USA." (GC Exh. 31 at 4.)

On March 16, 2021, ILA President Daggett sent out a letter to all Local 1694-1 members letting them know about the merger. The letter provides some of the terms of the merger[7] and concludes instructing Local 1694-1 members: "[i]f you have any questions related to the merger, please submit them in writing to the attention of International Secretary Treasurer Stephen Knott at 5000 West Side Avenue, North Bergen, NJ by March 31, 2021." (GC Exh. 6.)

On March 29, 2021, after hearing some rumors about the terms of the merger, Fowler responded to Daggett's letter by writing to Secretary Treasurer Knott (Knott) and raising concerns about how the merger could impact his ability to accumulate work hours with Respondent 1694. In his letter, Fowler specifically mentioned that he had asked Ashe about his ability to switch his Local from 1694-1 to 1694 under the ILA's Constitution, but that Ashe had informed Fowler that he could not switch Locals. (Tr. at 85; GC Exh. 7 at 1.)

On March 31, 2021, Knott assigned Ashe to investigate Fowler's concern in a letter stating:

> I enclose a letter that I received from former Local 1694-1 member Standford Fowler who claims that the recent merger of certain Local 1694-1 members into Local 1694 has affected their ability to work sufficient hours to qualify for seniority status as a deepsea longshore worker. Inasmuch as the International is not a party to your local seniority plan, I ask that you investigate his complaint and determine whether any corrective action is needed. (GC Exh. 8.)

J. Ashe Reacts to Fowler's Letter

In early April 2021, Fowler went into the Hiring Hall to badge in his card, and when he was passing the PMTA dispatcher, Fowler heard Ashe say to him: "Yo, you, I want to talk to you. When you get badge in come and talk to me. I want to talk to you. You should never write no letter to New York. I want to talk to you about that." Fowler testified that he wanted to avoid a confrontation with Ashe, so after he badged in, he went back outside. Ashe came out about 15 minutes later and said, "Yo, you come back inside, I want to talk to you. I want to talk to you about this letter. You should never write no letter to New York." And then he called over Respondent 1694's vice president at the time, James Glandton,[8] and union representative Dorsey to come over as well. (Tr. at 87, 98, 198.)

Ashe brought Fowler, Glandton, and Dorsey into the kitchen area in the Hiring Hall and said to Fowler, "You should never write a letter to New York. You should—you have no right to write no letter to New York." Fowler responded, "But the thing says that if we have a problem and don't feel comfortable, we should write back to him, so that's all I was doing." Ashe

[7] For example, the letter sets forth that that Local 1694-1 members would retain their current seniority position for the work within the former Local 1694-1 jurisdiction (i.e., warehouse work), and that they would be added to the seniority lists of workers performing work in their new jurisdiction behind individuals who already have such seniority. (GC Exh. 6.)

[8] I note that in its post-hearing brief, Respondent 1694 refers to Glandton as Respondent 1694's recording secretary at this time, but this is not reflected in the record. Rather testimony in the record is that Glandton was Respondent 1694's vice president at the time and so I refer to Glandton as Respondent 1694's vice president in this decision. Regardless of his exact title with Respondent 1694 at the time of this exchange, there is no dispute that Glandton was present for this interaction and that Glandton held an elevated office with Respondent 1694 at the time of the interaction. (R. Br. at 13.)

retorted, "No. You should never write no letter to New York."

Glandton continued to reprimand Fowler stating loudly:

> No, you know you should never write no letter to New York. Should never.
> Should never. Should never write no letter to New York. You know what,
> [we][9] were thinking of making guys come over and here and work, but because
> of this letter, we're not going to let you come over here and work no more.
> We're going to let you go into your jurisdiction and look—and seek
> job in your jurisdiction before you come over here. After today, that's what's
> going to happen. Don't come back over here. Go to your jurisdiction and go
> look for—seek jobs." (Tr. at 88, 92.)

In recalling these statements Fowler described Ashe and Glandton as loudly ridiculing him and speaking down to him. Fowler did not respond to Ashe or Glandton because he felt like he could not go over their heads. Fowler clarified at the hearing that, when Ashe and Glandton referenced "New York," they were referring to Fowler's letter to Knott, whose office is across the water from Manhattan.[10] (Tr. at 88–89.)

I credit Fowler's testimony about this exchange as it is uncontested. Respondent 1694 failed to have either Ashe or Glandton testify at hearing, even though both are referred to by name in the complaint and both continue to be under the control of Respondent 1694. (Tr. at 400–401.) The only other participant present for the exchange was Dorsey who did not testify about the exchange even though he was called as a witness by Respondent 1694's counsel at the hearing.

I also found Fowler credible when he discussed these exchanges between him and Ashe and Glandton, as when testifying about these exchanges, Fowler would raise his voice and take on a stern demeanor as he testified about what Ashe and Glandton said to him. I found Fowler's changed demeanor and tone as he was recalling these exchanges to be quite credible as he seemed to be almost reliving the exchanges.

After that exchange, Fowler went back outside to wait for a job. When the gang bosses came out to pick their workers for the day, Fowler testified that a gang boss named Kenny came over to Fowler and told him that he could not hire him, because he had been told that Fowler needed to get work from his side (meaning that Fowler needed to get warehouse work out of the Hut). (Tr. at 102–103.)

K. Ashe Reprimands Fowler Again for Writing the Letter to Knot and Threatens to Take him off the Clock

A couple of days later, Fowler was working the overnight shift at the Port, and he saw Ashe again. Ashe came up to Fowler when Fowler got out of the yard hustler and he said again: "You know, yeah, you should never write that letter to New York." Fowler responded, "But the letter said I should write the—to New York if I don't feel comfortable with what's going on." Ashe reprimanded Fowler again, telling him that he should not have written the letter. Fowler replied, "But I have a say," and Ashe countered, "You don't got no say." Fowler then asked, "What, what do you mean I don't got no say? I'm a grown man. What do you mean? . . . I have a voice." Ashe warned, "You don't got no voice. You know what, go in your truck before I [take] you off the clock tonight." Not wanting to continue arguing with Ashe, Fowler got into his truck and went to his job. (Tr. at 92–93.) Again here, Fowler's testimony about the conversation was uncontested.

After the merger became official, on April 12, 2021, Fowler was assigned to Local 1884, which was not his preferred local. (GC Exh. 9.) On April 15, 2021, Fowler faxed a letter to Knott, complaining about his assignment to Local 1884. (GC Exh. 10.) In response, Fowler received a letter from Knott by email dated April 20, 2021, stating that the ILA Constitution gave the International executive officers unilateral authority to merge or consolidate the locals and that the decision was not appealable. (GC Exh. 11.)

L. Ashe Blocks Fowler from getting Work through the Hiring Hall

Fowler testified that after the run-in with Ashe and Glandton, Fowler continued to seek jobs through the Hiring Hall, but that Ashe would block his attempts to get work each time. Fowler provided several specific examples of these occurrences. (Tr. at 108.)

In one example, right after the merger, Fowler was inside the Hiring Hall when a gang boss was on the stage calling for Registered Locals. When Fowler went up to the front of the stage holding up his card to get picked for the job, the gang boss saw Fowler and said, "You, step to me." Fowler stepped up to be picked for the job. At that point Ashe stepped in and told the gang boss, "No, don't hire him. Go over there, give it to somebody else." Then Ashe told Fowler, "You go over there and look for jobs on your side. Go." Fowler left because he was concerned that Ashe was going to ask security to escort him out of the building. (Tr. at 105–106.)

Fowler also testified about another incident with Ashe where Fowler was standing outside the Hiring Hall after the initial hire. While Fowler was waiting outside, Ashe came out and said to Fowler: "What are you doing here? I told–don't I told you not to come over here and seek no job? . . . Go over to your side and seek job. You got seniority over there. Go and seek job." Fowler responded that he wanted to work out of the Hiring Hall because he needed to get his hours with Respondent and Ashe replied: "You need to go over your side because if you don't go over there, and keep coming over here, you're trespassing on Union property and I am going to . . . call the police . . . and charge you for trespassing on the Union's property." Fowler responded, "Trespassing on Union property? Now, you're making me scared now, boss. I will get arrested for nothing." (Tr. at 107–108.)

[9] The transcript reads that the word here is "you," but it is clear from the statement's context that Fowler meant to say "we". (Tr. at 88.)

[10] Knott's office in North Bergen, New Jersey, is directly across the Hudson River from Manhattan. (GC Exh. 7.)

Right after this exchange, a gang boss named Slim came up to Fowler and said he needed a driver for a yard hustler. Fowler approached Slim, who told him, "I need you, come on," and took Fowler's card. At that point Ashe approached Slim and instructed him not to hire Fowler. Slim responded to Ashe that he needed someone for a job, and Ashe told Slim, "I don't give a . . . what you need, but you not going to hire him today." Here again, Ashe blocked Fowler from getting the job and Fowler left the Hiring Hall and went back to the Hut to look for work. Fowler also testified about another time in around early April 2021, when he went in on a Saturday to get a job at the Hiring Hall and when the straw boss was about to take Fowler's card for a job, Ashe stepped in and told her not to take Fowler's card and to find someone else for the job. Fowler testified that Ashe again told him to go over to his side to seek jobs. Fowler testified that there were about 10 other casuals who used to be members of Local 1694-1 who were picked for the job that day,[11] but that the straw boss did not pick Fowler after Ashe intervened. (Tr. at 108, 111–12; 234–235.)

Fowler testified that incidents like this happened about 20 times, when he would try to get hired out of the Hiring Hall and each time, if Ashe was there, he would tell the gang bosses not to hire Fowler and he would tell Fowler to go to his side, meaning that Fowler needed to go back to the Hut to seek warehouse work. (Tr. at 112.)

Because Ashe was blocking Fowler from obtaining jobs from the Hiring Hall when he was present, Fowler had to find other ways of getting his 1,300 hours with Respondent 1694. By the time of the merger in March 2021, Fowler had already attained about 1000 hours out of 1,300 hours he needed for the recording year. (GC Exh. 7; GC Exh. 10.) After his run-in with Ashe and Glandton in early April, Fowler was only able to obtain work from the Hiring Hall when Ashe was not present or after hours when the Hiring Hall was closed. Fowler testified that he was able to get work after hours, because the gang bosses who knew Fowler would call him for "leftover jobs," i.e., jobs that open up because a worker leaves the job early. Since this was done after hours, neither Ashe nor the Hiring Hall was involved in the hire. By getting jobs this way, Fowler was able to get the 300 hours he needed to reach his 1,300 goal by the summer of 2021. Fowler testified that he started going back to the Hut and working in his old jurisdiction once those hours were reached. (Tr. at 111–114.)

M. Fowler is Allowed to Seek Employment through PMTA within Respondent 1694's Jurisdiction

On February 22, 2022, President Ashe in a surprising reversal, wrote the following letter to Fowler:

> Please be advised that you are permitted to seek employment through PMTA hiring system within the craft jurisdiction of International Longshoreman's Association Local 1694, subject to the hiring rules negotiated with PMTA, and subject to other qualifications established by PMTA or GT USA. In the event that you seek employment within the jurisdiction of Local 1694, you will be treated similar to other casual employees. (GC Exh. 12.)

Fowler testified that he was made aware of the letter before it arrived at his home, when the Board agent who had been investigating his NLRB charges called Fowler to let him know about the letter and subsequently emailed the letter to him sometime around March 1, 2022. (Tr. at 115–116.)

N. Fowler Returns to the Hiring Hall on March 3, 2022

After receiving this notification, Fowler went back to the Hiring Hall on March 3, 2022, and no one interfered with his hire this time. Fowler was put on a job driving a yard hustler at the Port that day. Fowler worked his shift, but unfortunately at around 4:30 p.m., he hit a ditch with his hustler truck as he was attempting to park his chassis. Once in the ditch, the hustler truck's tire was suspended in the air and as a result Fowler could no longer drive it. Fowler called for help. GT USA Supervisor Kyle Bagnell and GT USA "safety man" Mark Weyman soon arrived, and they brought another truck over to pull the hustler truck out of the ditch. (Tr. at 117–122; GC Exh. 16.) A forklift had to be used to detach the chassis from the truck before it could be pulled out. (Tr. at 384–385.)

Once on the scene Supervisor Bagnell called Respondent 1694's Vice President Michael Miller and informed him that Fowler had been in an accident. (Tr. at 354–355, 201–202.) After Miller arrived on the scene, he informed Bagnell that Fowler was a member of Local 1884 (as opposed to Respondent 1694), and Miller called Local 1884 Business Agent Jose Gonzalez to the scene. (Tr. at 355.) Shortly thereafter, Port security arrived as well. (Tr. at 121, 356.) Either Miller or a member of security told Fowler that he needed to take a drug test due to the accident. (Tr. at 122, 354.) Fowler initially protested that a drug test was unnecessary because the accident was minor,[12] but he eventually agreed to get tested. The result of Fowler's drug test was negative. (Tr. at 122–126; GC Exh. 14.)

Fowler returned to the job after he found out he passed the drug test, because it was his understanding that he would be able to go back to work if he passed the test, but the gang boss informed him that he was done for the day when he returned. (Tr. at 128.)

Michael Hall, who was GT USA's Chief Operating Officer (COO) at the time of the accident, testified that when an employee is involved in an accident, GT USA generates an incident report through its security and safety departments. The employee is then suspended while further information is gathered. Consistent with that practice, GT USA suspended Fowler as a result of the accident. (Tr. at 248–249.) On March 3, 2022, GT USA issued a letter to President Ashe stating:

[11] On cross-examination, Fowler testified that these casual employees from the warehouse unit included a "Jamaican guy" named Merrick, but he either could not remember the names of the other casuals or was reluctant to reveal their identities to Respondent 1694. (Tr. at 234–235.)

[12] Throughout his testimony, Fowler was insistent that this episode with the hustler be referred to as an "incident" rather than an "accident," as Fowler felt that the event was minor and had not caused damage to the truck. (Tr. at 358, 385–392.) I place no significance to the terminology used and will use the term "accident" in my decision.

> On March 3, 2022, Mr. Stanford Fowler (port 0410) was involved in an accident while driving a hustler. As such, he is suspended immediately from all employment with Gulftainer until we can review the incident. Please let us know when is a convenient time to meet. (GC Exh. 20.)

Unfortunately, Fowler was not notified that he had been suspended on March 3.

O. Interaction Between Miller and Fowler on March 5, 2022

Fowler, who was unaware that he had been suspended from work with GT USA, came back to the Hiring Hall on March 5, 2022. (Tr. at 128.) That morning after badging in, he was given a job with gang boss Chuck Arden (Arden) from GT USA. Fowler reported to the ship where he was assigned, and he was putting on his gear for the job when an ILA worker came up to him and told him to go back to see Arden. Fowler drove back to the Hiring Hall and asked Arden what was going on. Arden responded that when the timekeeper saw Fowler's card, he had called Ashe who reportedly told Arden that there had been an email from GT USA stating that Fowler had been banned from the Port. At that point no one had informed Fowler that he had been suspended let alone banned from the Port. Fowler asked Arden if he could get a copy of the email and Arden did not respond, so Fowler went over to the PMTA dispatcher Pat Cook and asked for his card back. Cook asked why Fowler needed his card back and Fowler told him that he needed it back because he was told that he was barred from the Port. Cook told Fowler that he had not heard that Fowler was barred from the Port and gave Fowler his card back. (Tr. at 130–131.)

After getting his card back, Fowler called Gary Lewis (Lewis), a business agent for Respondent at the time, and told him what had happened. Lewis told Fowler to go and work for Delaware River Stevedore (DRS) (a different PMTA stevedore company doing work at the Port), because GT USA could not stop him from doing so. (Tr. at 132.)

When Fowler arrived, a DRS dispatcher gave him an assignment, but as he was getting ready to start work, Local 1884 Representative Gonzalez (Gonzalez) approached him and said he could not work at DRS and needed to go back to his side.[13] Fowler testified that Vice President Miller drove up while Fowler and Gonzalez were talking and Miller asked Fowler, "You working?" Fowler responded, "Yes, I'm working," to which Miller responded, "Who you working for?" Fowler responded that Tammy from DRS had given him the job. Miller then called Tammy to confirm that she had given Fowler the job and she confirmed the assignment. After that, Miller announced that he was going to call the security guard. Miller called security and told them, "Hey, security—I need a security guard down here at the ship because Mr. Stanford Fowler down here, need to get off the—off the port because he's barred from the port." (Tr. at 133–134; 206.)

At that point, realizing that security had been called in, Fowler got in his car and Miller drove next to him escorting him off the Port. On his way out, Fowler stopped at a shop because he wanted to take a picture of an OSHA notice that was in one of the Port shops, so he got out and took a photo of the notice. Fowler testified that while he was at the Port shop, he saw a security guard approaching and Fowler asked him, "Hey, ya'll looking for me?" to which the security guard answered, "Yeah, yeah, yeah, I got a call that, you know, that you need to get off the port." Fowler responded "All right then. Here I go, I'm coming off the port," and then he drove off with Miller and the security guard driving behind him. When Fowler pulled into the parking lot outside of the Port, Miller and a security guard pulled up near him and went over to Fowler's car. The security guard told him again to leave and he added, "if you know what I know, you don't come back here." Fowler left the Port at that point. (Tr. at 135–137.)

Miller also testified about this interaction, but his version differed from Fowler. Miller testified that while he was driving around the Port between jobs, he saw what he described as Fowler and Gonzalez arguing. (Tr. at 361, 367.) According to Miller he drove right up to Fowler and Gonzalez and spoke to them through the open window of his car. (Tr. at 368.) Miller testified that after he pulled up, he heard Gonzalez telling Fowler that he needed to go back to his side, and Fowler stating that he was not part of Gonzalez' Local (1884). According to Miller, Gonzalez responded that Fowler was not even supposed to be on the Port. Miller testified that at that point he told Gonzalez to stop arguing, and Miller then called security at the front gate to ask if Fowler was allowed on the Port and front gate security said, "No." According to Miller, he then said to Fowler, "[M]an, you are not allowed on this port and if they catch you, you're subject to be banned from this port." Miller then testified that Fowler was not listening and at that point just took off from the Port. Miller then testified that after that he spoke to Gonzalez. Miller did not say anything about escorting Fowler off the Port, but he was also not directly asked about it. (Tr. at 361–362.)

I credit Fowler's testimony over Miller's with regard to this interaction for several reasons. First, Fowler's testimony was straight forward and included concrete details about where he was and who he spoke to. His testimony was clear and it was provided in response to open-ended questions asked by counsel.

Miller's testimony, on the other hand, does not make logical sense. Throughout his testimony, Miller emphasized that it was Gonzalez, not Miller who was Fowler's union representative, as Fowler had been assigned to Local 1884 after the merger. Thus, it does not make sense that Miller would go out of his way to get involved in an argument between Fowler and his representative. Further, it was certainly not Miller's responsibility to call security about Fowler being on the Port when Miller was not Fowler's representative. Additionally, I also do not find it credible that Miller would have been able to tell from driving by Fowler and Gonzalez that they were arguing as there was no indication that the conversation had turned physical or was even heated. If Gonzalez had been concerned that Fowler was on the Port, he certainly could have called security, but he did not. Also, Miller testified that when he called security, he simply

[13] Apparently, Gonzalez had not been made aware of Ashe's February 22, 2022 letter permitting Fowler to seek jobs in Respondent 1694's jurisdiction at the time.

asked if Fowler was allowed on the Port and hung up once he got his answer. If that was the case, it does not follow that security would immediately show up to escort Fowler off the Port. In addition, immediately after testifying that he had called security to ask if Fowler was banned from the Port, Respondent 1694's counsel asked Miller: "Did you call security during the interaction?" Miller inexplicably responded, "No." (Tr. at 362.)

Moreover, Miller's testimony differs from Respondent 1694's version of the events as set forth in its May 3, 2022, position statement submitted to the Region. It its position statement, Respondent 1694 contended:

> In response to Fowler's accident and his combative conduct with Port Security, GT USA Wilmington, LLC, the "Employer," barred Fowler from the Port and suspended his certification. Ignoring the Employer's ban, on March 5, 2022, Fowler sought hire and was improperly hired. Miller observed Fowler working, and not wanting to see him face further discipline, instructed him that he should leave the Port because he had been banned. (GC Exh. 32 at 2.)

Thus, Respondent 1694 admitted that Miller told Fowler that he should leave the Port because he had been banned. It is also notable that Respondent 1694 makes no note of Gonzalez or an argument, but rather sets forth only that Miller observed Fowler working on the Port.[14]

For these reasons, I credit Fowler's testimony over Miller's testimony about the interaction.

P. Fowler Attempts to get a Job at the Hut 3 or 4 Days Later

Three or 4 days later, Fowler decided to try to get a job through the Local 1694-1 hiring hall (the Hut) which is on Port property. Fowler went into the hall and found Andy Markow, who was the GT USA hiring manager for the 1694-1 side. When Fowler told Markow that he was there to get a job, Markow responded, "No, you're barred. You got to see Mike Hall." At that point it appears that Fowler did speak to COO Hall who confirmed that Fowler was suspended. With regard to this interaction, Fowler briefly testified: "So, I talked to him. So, then I left. I can't get no job." (Tr. at 137–139.)

As set forth above, it was GT USA's practice to suspend employees while an investigation of an accident is conducted. Hall also testified that once the investigation is complete, GT USA and Respondent 1694 would arrange to get together and discuss the terms of the disciplinary action. Initially, Hall estimated that suspensions for this type of accident would last for a few weeks, but on cross-examination he stated that sometimes it can take months to work things out with Respondent 1694. (Tr. at 249–251, 258.)

Hall also testified that while GT USA does have the authority to ban employees from the Port, this has only occurred under extreme circumstances such as theft, security risk, or safety risk. Hall also testified that he did not recall Fowler being banned from the Port and that it would be unlikely for GT USA to ban Fowler from the Port given the type of accident Fowler had been in. Hall also testified that GT USA can only suspend employees from working for GT USA but would have no authority to suspend an employee's work for any other employer. (Tr. at 252-54.)

R. Fowler Files Grievances

After he spoke with GT USA about being suspended from work around March 5th, Fowler went home and wrote up two grievances against GT USA, one with Respondent 1694 and one with Local 1884. (GC Exh. 16.) Fowler gave both of his grievances to Local 1884 Business Agent Gonzalez, and he asked Gonzalez to make sure he gave one to Respondent 1694's Business Agent Gary Lewis. There is no dispute that Lewis received Fowler's grievance. When Fowler tried to call Lewis to follow up on his grievance, Lewis never returned any of Fowler's calls. Fowler testified that he also had contact with the Local President from 1884, initially, but eventually the Local 1884 President informed Fowler that he had spoken to Ashe and that he was not getting anywhere with Ashe, so he was not sure what to do. After that Fowler did not have contact with Local 1884 or 1694 for several weeks. (Tr. at 140–144.)

S. Respondent 1694 Responds to Fowler's Grievance

Around 2 months after Fowler's suspension, on May 10, 2022, Respondent 1694's recording secretary, Kevin Cooper (Cooper), sent a text to Fowler informing Fowler that Cooper just received Fowler's grievance from Lewis. In the text Cooper set forth that Respondent 1694 had scheduled a grievance meeting on Friday, May 13 at 12 p.m. at Respondent 1694's union hall and that Fowler should bring what he needed to present his grievance to the meeting; he also asked Fowler to confirm that he had received Cooper's text message. Fowler responded to Cooper's text objecting to the grievance meeting and pointing out that the deadlines for Respondent 1694's grievance procedure had passed long ago, and that Fowler had been suspended from work for months without explanation or a response from Respondent 1694 regarding the grievance that he had filed more than 2 months earlier. (R Exh. 5; Tr. at 147.)

Cooper responded that Fowler was being given an opportunity to present his case and that Fowler was at fault for failing to give his grievance directly to the recording secretary. Fowler responded that Respondent 1694 was not following its own grievance process timelines and accused Respondent 1694 of discrimination in failing to process his grievance. Fowler reiterated that he objected to the hearing and Cooper stated that Fowler must attend the grievance meeting in order to have the issue addressed. At that point, Fowler had already filed an amended charge with the Board on the issue and did not trust Respondent 1694 to treat him fairly. (Tr. at 219; R Exh. 5.) Fowler did not attend the meeting. (Tr. at 219.)

With regard to the grievance filed with Respondent 1694, it appears that Lewis intentionally withheld Fowler's grievance and was removed from his position with Respondent 1694 as a direct result of doing so. Respondent 1694's counsel only discovered that the grievance had been withheld in early May 2022, after Fowler had filed an amended charge with the NLRB about

[14] It is also notable that Respondent 1694 sets forth that Fowler was in fact banned from the Port in its position statement, even though the record is devoid of evidence that Fowler was ever banned from the Port.

this issue, and Lewis admitted that he had withheld the grievance. (R Exh. 8.)

On May 11, 2022, Hall wrote to General Counsel for GT USA Greg Iannarelli and outside labor counsel, Lauren Russell, informing them that Hall had spoken with Ashe about GT USA being ready to sit down to discuss Fowler's suspension with ILA. In the email, Hall stated that Ashe had informed him that he was just handed a grievance by Fowler the day before and that the Union was meeting internally about Fowler on the May 13. Hall also expressed that he told Ashe to keep him posted on whether they want to meet, and that GT USA was open to working towards a return-to-work date. (GC Exh. 21.) It appears that there were no further discussions regarding Fowler's return to work at GT USA after early May 2022.

Fowler never received any written communication from GT USA or Respondent 1694 informing him that he was suspended from work with GT USA. After he was escorted off the Port by Respondent 1694 Vice President Miller and Port Security on March 5, 2022, Fowler never received anything in writing from GT USA or Respondent 1694 telling him he could return to work at the Port. (Tr. at 149–150, 220.) Fowler has not returned to Respondent 1694's Hiring Hall for work since March 5, 2022.

I. ANALYSIS

A. The 8(b)(1)(A) Threatening and Coercive Statement Allegations

The complaint alleges that Respondent 1694 violated Section (8)(b)(1)(A) of the Act when Ashe warned Fowler that he should not be writing letters to the ILA complaining about the merger of the ILA local unions affecting employees' ability to work; and when Ashe told Fowler that Respondent 1694 would enforce rules barring Fowler's access to Respondent 1694's Hiring Hall.

Section 8(b)(1)(A) of the Act provides that a labor organization commits an unfair labor practice when it restrains or coerces employees in the exercise of their Section 7 rights. Among the rights guaranteed by Section 7 of the Act is the general "privilege to protest and to question the wisdom of their bargaining representative and to persuade others or take such steps as they deem necessary to align their union with their position" and such so-called dissident activities. *See Teamsters Local 100 (Wicked Films, LLC)*, 370 NLRB No. 15 (2020), *East Texas Motor Freight*, 262 NLRB 868 (1982); *Teamsters Local 745 (Transcon Lines)*, 240 NLRB 537 (1979); *Roadway Express*, 108 NLRB 874, 875 at fn. 3 (1954). See also *Transcon Lines*, 235 NLRB 1163, 1165 (1978); *Singer Co.*, 220 NLRB 1179, 1180 (1975); and *Samsonite Corp.*, 206 NLRB 343, 346 (1973); *Sheet Metal Workers Local 16 (Parker Sheet Metal)*, 275 NLRB 867 (1985); *Nu-Car Carriers, Inc.*, 88 NLRB 75, 76–77 (1950). To determine whether a union's statements violated Section 8(b)(1)(A), the Board considers "whether the [statement] reasonably tended to restrain or coerce employees in the exercise of their Section 7 rights." *Service Employees, Local 121RN*, 355 NLRB 234, 235 (2010).

Fowler's uncontested testimony is that days after he submitted his March 29, 2021 letter to Knott raising concerns about the impact that the merger would have on his ability to work in different areas of the Port, Respondent 1694 President Ashe, and Respondent 1694 Vice President Glandton publicly admonished Fowler telling him repeatedly that he should not have written the letter to Knott, complaining about the merger. Initially, Ashe called out to Fowler as Fowler was walking out of the hiring hall telling him that he wanted to talk to Fowler about the letter he had written, when Fowler walked out of the hiring hall in an attempt to avoid another confrontation with Ashe, Ashe followed him out and brought him back into the hall with Vice President Glandton and Respondent 1694 representative Dorsey. Once back in the kitchen area of the Hiring Hall, both Ashe and Glandton reprimanded Fowler for writing the critical letter and that Glandton specifically stated:

> No, you know you should never write no letter to New York. Should never.
> Should never. Should never write no letter to New York. You know what, [we] were thinking of making guys come over and here and work, but because of this letter, we're not going to let you come over here and work no more. We're going let you go into your jurisdiction and look—and seek job in your jurisdiction before you come over here. After today, that's what's going to happen. Don't come back over here. Go to your jurisdiction and go look for—seek jobs. (Tr. at 88.)

These statements made by the Respondent 1694's President and agent[15] are coercive on their face. Ashe and Glandton reprimanding Fowler for complaining about Respondent 1694's internal processes and then flagrantly threatening Fowler that they were going to change the Hiring Hall referral policy as a direct result of his questioning Respondent 1694, are inherently coercive and clearly meant to dissuade Fowler from engaging in such protected activity in the future.[16] These uncontested statements coerced and restrained Fowler in the exercise of his Section 7 rights in violation of Section 8(b)(1)(A) of the Act.[17]

[15] As noted, Fowler's testimony about this exchange is uncontested as Respondent 1694 failed to have either Ashe or Glandton testify at hearing, even though both individuals continue to be under the control of Respondent 1694. (Tr. at 400–401.) The only other participant in the exchange was Respondent 1694 representative Dorsey who did not testify about this exchange even though he was called as a witness by Respondent 1694.

[16] Although the complaint alleges that it was Ashe that told Fowler that Respondent 1694 would enforce rules barring Fowler from access to the Hiring Hall, the evidence demonstrates that it was Glandton who made these statements. I find that there is no due process issue here, as Respondent 1694 was provided with the timing and substance of the statement, the statement was made in Ashe's presence and Glandton was specifically named in the complaint as Respondent 1694's agent, which status Respondent 1694 stipulated to.

[17] I also note that the record establishes that sometime in early April 2021, Ashe threatened to take Fowler off a job at the Port after arguing with him about Fowler's right to send his letter to Knott. (Tr. at 93.) Although this uncontested statement would also qualify as a threatening statement under Sec. 8(b)(1)(A) of the Act, it was not specifically alleged in the complaint.

B. The 8(b)(1)(A) and (2) Refusal to Refer Allegations

The complaint also alleges that Respondent 1694 operates an exclusive referral service and that it violated Section 8(b)(1)(A) and (2) of the Act when Respondent 1694 failed or refused to refer Fowler out to work to PMTA employers, including GT USA, because of his dissident union activity. General Counsel alleges that this failure or refusal to refer took place during two separate periods. The first period was from about March 31, 2021, until about March 1, 2022; and the second was from March 5, 2022, to the present. The General Counsel separately alleges that Respondent 1694 violated Section 8(b)(1)(A) and (2) of the Act when Miller told Fowler that he had been banned from the Port on March 5, 2022.

Section 8(b)(2) states, in pertinent part, that "[i]t shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . . [or]; (2) to cause or attempt to cause an employer to discriminate against an employee in violation of [section 8(a)(3)]. . . . Accordingly, a union breaches its duty of fair representation when its conduct toward a unit employee is arbitrary, discriminatory or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *Carpenters Local 626*, 310 NLRB 500 (1993). Opposition to union officers or policies are protected Section 7 activities. *Sheet Metal Workers Local 16 (Parker Sheet Metal)*, 275 NLRB 867 (1985).

A derivative violation of Section 8(b)(1)(A) also arises where an 8(b)(2) violation has been proven. The reason is that the union's causation of employment interference necessarily constitutes restraint and coercion of the workers exercise of their Section 7 rights. *Town & Country Supermarkets*, 340 NLRB 1410, 1411 (2004); *Postal Workers*, 350 NLRB 219, 222 (2007).

In determining whether a union operating an exclusive referral service has violated Sections 8(b)(1)(A) and (2) of the Act by failing or refusing to refer an individual out for employment, the Board has applied both the analytical framework set forth in *Wright Line*,[18] and the duty-of-fair-representation framework. *SSA Pacific Inc.*, 366 NLRB No. 51, slip op. 1 (2018); *Teamsters "General" Local 200*, 357 NLRB 1844 (2011), affd. 723 F.3d 778 (7th Cir. 2013). The General Counsel need only succeed in one of these analyses in order to show a violation. See, e.g., *Teamsters Local 100* (*Wicked Films, LLC)*, 370 NLRB No. 15 (2020), slip op. at 1 fn. 1 (affirming administrative law judge's decision under the duty of fair representation framework and declining to review the administrative law judge's *Wright Line* analysis).

Under the *Wright Line* analytical framework, the General Counsel must establish: (1) the employee engaged in protected activity; (2) Respondent 1694 had knowledge of that activity; and (3) Respondent 1694 bore animus toward the employee's protected activity, and that the employee's employment opportunities were adversely affected. See*, Sheet Metal Workers Local Union 85 (The Logistics Co.)*, 368 NLRB No. 50, slip op. at 8 (2019), and *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002). Once the General Counsel establishes that the employee's protected activity was a motivating factor in the decision, the burden of persuasion shifts to Respondent 1694 to show that it would have taken the same action even in the absence of the protected activity. *Security, Police & Fire Professionals of America (SPFPA) Local 444*, 360 NLRB 430, 436 (2014). Respondent 1694 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. *Teamsters "General" Local 200*, 357 NLRB 1844, 1852 (2011). When Respondent 1694's stated motives are found to be false, the circumstances may warrant an inference that the true motive is one that Respondent 1694 desires to conceal. Id. In other words, a finding of pretext defeats any attempt by Respondent 1694 to show that it would have not referred the discriminatee absent his protected activities. Id.

Under the duty of fair representation analysis, an operator of an exclusive hiring hall owes a duty of fair representation to all applicants and employees using the hall. *Stage Employees IATSE Local 720 (Tropicana Las Vegas, Inc.)*, 363 NLRB 1485, 1490 (2016), enfd. 718 Fed.Appx 512 (9th Cir. 2017). The union breaches its duty of fair representation when it acts in an arbitrary, discriminatory, or bad-faith manner. *Teamsters Local 631 (Vosburg Equipment)*, 340 NLRB 881, 883 (2003). When a union prevents a worker from being hired through the referral service for reasons other than failure to pay dues, initiation fees, or other uniformly required fees for the union, it is presumed to encourage union membership and the burden shifts to the union to justify its actions. *Lucas v. NLRB*, 333 F.3d 927, 932 (9th Cir. 2003). This presumption can be rebutted by showing the union acted in accordance with a valid security clause or its action was necessary to the effective performance of its function of representing its constituency. Id.; See also *Stage Employees IATSE Local 150 (Mann Theatres)*, 268 NLRB 1292, 1295 (1984); *Plasterers Local 299 (Wyoming Contractors Assn.),* 257 NLRB 1386, 1395 (1981). Moreover, it is well established that a union may not lawfully refuse to refer for hire an individual because of their membership in a sister local. *See, e.g., Plumbers Local 198*, 319 NLRB 609 (1995).

1. Exclusive Hiring Hall

Respondent 1694 denied that was a party to an exclusive hiring hall with PMTA in its answer to the complaint. (GC Exh. 1(i).) The record evidence clearly demonstrates that Respondent 1694 operates an exclusive hiring hall. A union's hiring hall is exclusive if it is an employer's initial or primary source for employees. See*, Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720 (Tropicana Las Vegas, Inc.),* 363 NLRB No. 148 (2016), citing *Stage Employees IATSE Local 720 (AVW Audio Visuals, Inc.),* 341 NLRB 1267 (2004), and *Denver Theatrical Stage Employees Union No. 7*, 339 NLRB 214, 219 (2003). It is well established that an exclusive hiring hall may be created by written or oral agreement or by practice. See *Southwest Regional Council of Carpenters (Perry Olsen Drywall)*, 358 NLRB 1, slip op. at 1 fn. 2 (2012); *Teamsters Local 328 (Blount Bros.)*,

[18] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

274 NLRB 1053 (1985); *Plumbers Local 17*, 224 NLRB 1262, 1263 and fn.6 (1976), enfd. 575 F.2d 585 (6th Cir. 1978).

Here, both the contractual language and the actual practice establish that Respondent 1694's hiring hall is exclusive. With regard to the contract language, the Blue Book explicitly states in pertinent part, "that all replacements and fill-ins shall be hired exclusively from the registered work force and that no other employees shall be hired as replacements or fill-ins, and that all replacements or fill-ins shall be hired through the Hiring Center, when the Hiring Center is open."[19] (GC Exh. 23 at pp. 128–129 internal pagination.) This language plainly satisfies the criteria for an exclusive hiring hall. See, *Sheet Metal Workers Local* 27, 316 NLRB 419–420 (1995).

In addition, the record evidence demonstrates that all employees working on the Port were hired through Respondent 1694's hiring hall. As Respondent 1694's own witness, Union Representative Dorsey testified that PMTA employers may not directly hire employees off the street without going through the hiring hall first. (Tr. at 339.)

Accordingly, the Respondent 1694 and the PMTA have maintained and operated an exclusive hiring hall and Respondent 1694 owes a duty of fair representation to applicants using its hiring hall.

2. Refusal to Refer from March 31, 2021, through March 1, 2022

I find that Respondent 1694 violated Section 8(b)(1)(A) and (2) of the Act when it refused to refer Fowler to jobs through its Hiring Hall from March 31, 2021, through March 1, 2022, under either standard.

(a) Wright Line analysis

Respondent 1694 failed and refused to refer Fowler from the Hiring Hall from March 31, 2021, through March 1, 2022, in violation of Section 8(b)(1)(A) and (2) of the Act under the analysis set forth in *Wright Line*.

Under the first prong of the *Wright Line* analysis, the General Counsel must show that Fowler engaged in protected Section 7 activity and that Respondent 1694 was aware of that activity. Here, Fowler has a long history of open dissident union activity. Even before the events at issue in the instant case, Fowler had a significant record of openly challenging the way that Respondent 1694 conducted its business. Significantly, at times Fowler's criticism of Respondent 1694's processes directly focused on President Ashe himself. For example, in January 2018, Fowler wrote a letter to the ILA explicitly criticizing the collective bargaining agreement that Trustees Ashe and Witiw had negotiated on behalf of the Local 1694-1 members. (GC Exh. 28.) Also in his March 29, 2021 letter to Knott, Fowler specifically calls out Ashe for contesting Fowler's ability to switch Locals under the ILA Constitution. (GC Exh. 7.) Thus, General Counsel has shown that Fowler engaged in protected activity and that Respondent 1694 was well aware of the activity.

Second, General Counsel must show that Respondent 1694 interfered with Fowler's employment opportunities as a result of animus against Fowler's protected activity. Initially, there are multiple examples in the record of President Ashe blocking Fowler from getting referred to jobs out of the Hiring Hall. In each case President Ashe stepped in just as a PMTA employer's gang boss was about to pick Fowler for work. Fowler's testimony about each of these instances is uncontested and Fowler testified that he experienced this kind of interference 20 times from the period between March 31, 2021, through March 1, 2022. With regard to animus, Glandton's reprimand to Fowler leaves nothing to the imagination as he openly stated that Respondent 1694 was going to start requiring Fowler to seek work through the Hut before he was able to be eligible for jobs through the Hiring Hall as punishment for Fowler's dissident letter to Knott.

As General Counsel presented a prima facie case under *Wright Line*, the burden shifts to Respondent 1694 to show that it would have blocked Fowler from getting jobs from the Hiring Hall regardless of Fowler's dissident activity. In its defense, Respondent 1694 contends that Ashe was not discriminating against Fowler when he blocked Fowler from getting jobs out of the Hiring Hall, but rather that Ashe was following the Craft Interchange Agreement from PMTA's contract with the PMTA Locals (aka the Blue Book). Respondent 1694 contends that when Ashe was instructing Fowler to get work from his side and blocking the gang bosses from picking Fowler as a registered casual, he was just following the craft agreement requiring that Fowler seek jobs in the warehouse worker's jurisdiction before seeking jobs through the Hiring Hall. The problem with Respondent 1694's argument is that the Craft Interchange Agreement is part of the Blue Book, which never applied to the merged Local 1694-1 employees, including Fowler. Respondent 1694's own witness, Union Representative Dorsey endorsed that this was the case in his testimony. (Tr. at 333.)

The language of the merger agreement itself makes it clear that even after the merger, the Local 1694-1 workers would still work under their separate collective-bargaining agreement. As set forth in the merger agreement itself:

> As of the effective date of the merger, Local 1694, Local 1883, and Local 1884 shall assume all collective bargaining duties and responsibilities for all bargaining units represented by Local 1694-1 prior to the merger, *honoring the terms of any existing and extant collective bargaining agreement covering such units and assuming all representational obligations imposed by applicable law*. (GC Exh. 31 at Exh. D; emphasis mine.)

Thus, Fowler and his fellow former Local 1694-1 members were still operating under the collective bargaining agreement between Local 1694-1 and DSPC, which was taken over by GT USA in 2018, and that agreement does not contain a craft interchange provision. This is also supported by past practice, as before April 2021, the record demonstrates that Fowler regularly was referred out to jobs through the Hiring Hall in Respondent 1694's jurisdiction without any expectation that he seek jobs in

[19] As noted earlier, this language is repeated in a memorandum of agreement effective October 1, 1996, through September 30, 2001. (GC Exh. 23 at 7 of MOA.)

Local 1694-1's jurisdiction first.

The fact that Local 1694-1 members retained their separate hiring procedures was confirmed by Respondent 1694 in its September 27, 2021 position statement to the NLRB. As Respondent 1694 asserted:

> Locals 1694, 1883, 1884, and 1694-1 had separate hiring practices and procedures, all of which were joint hiring procedures jointly administered by the respective employers. *The existence of distinct hiring practices and procedures has remained consistent and was not affected by the merger. Instead, post-merger hiring practices for each of the bargaining units has continued without interruption or change*. (GC Exh. 31 at 2; emphasis mine.)

Thus, Respondent 1694 failed to demonstrate that Ashe's consistent blocking of Fowler getting hired through the hiring hall was pursuant to a neutral craft requirement. Instead, as was unambiguously spelled out by Glandton right after the merger, Ashe's action was motivated by Respondent 1694's umbrage that Fowler had sent the letter to Knott, criticizing Ashe and the Union.

Thus, I find that Respondent 1694 failed and refused to refer Fowler from the Hiring Hall from March 31, 2021, through March 1, 2022, in violation of Section 8(b)(1)(A) and (2) of the Act under the Board's *Wright Line* analysis.

(b) Duty of Fair Representation Analysis

Under the duty of fair representation analysis, General Counsel must show that Respondent 1694 interfered with Fowler's employment status for reasons other than failure to pay dues, initial fees, or other fees uniformly required. As set forth above, the evidence shows that Respondent 1694 blocked Fowler from getting jobs through its Hiring Hall multiple times from the period between March 31, 2021, through March 1, 2022. There is no evidence in the record that Respondent 1694 blocked Fowler due to his failure to pay union dues or fees. Thus, the burden shifts to Respondent 1694 to show that the refusal to refer was pursuant to a valid union-security clause or was necessary to the effective performance of its representative function. *Plumbers Local 342 (Contra Costa Electric*), 336 NLRB 549, 550, enfd. sub nom. *Jacoby v. NLRB*, 325 F.3d 301 (D.C. Cir. 2003); *Operating Engineers Local 406 (Ford, Bacon & Davis Construction*), 262 NLRB 50, 51 (1982), enfd. 701 F.2d 504 (5th Cir. 1983).

Here again, Respondent 1694's defense is that it was following the neutral Craft Interchange Agreement when Ashe blocked Fowler from work in Respondent 1694's jurisdiction and told Fowler to go to his side to get jobs. As set forth above, the issue with this defense is that the evidence demonstrates that the Craft Interchange Agreement was never applicable to the warehouse employees that were previously represented by Local 1694-1, even after the merger. Thus, Respondent 1694's defense is pretext. In addition, we have a direct admission by Glandton that the reason that Respondent 1694 was blocking Fowler from getting work directly through Respondent 1694's Hiring Hall was due to the fact that he wrote the letter to Knott.

In light of all of the above, I find that Respondent 1694 failed and refused to refer Fowler from the Hiring Hall from March 31, 2021, through March 1, 2022, in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act, under the duty of fair representation analysis.

1. General Counsel alleges that Respondent 1694 violated Section 8(b)(1)(A) and (2), when Vice President Michael Miller informed employee Stanford Fowler that he was banned from the Port and for failing to refer Fowler out of the Hiring Hall from March 5, 2022, to the present

Having found that Respondent 1694 unlawfully prevented Fowler from being referred out of the Hiring Hall, from March 31, 2021, through March 1, 2022, I now turn to General Counsel's allegation that Respondent 1694 again unlawfully prevented Fowler from being referred out of the Hiring Hall from March 5, 2022, through the present. The same analysis applies here, but the circumstances of this time period are different.

a) Wright Line analysis

Initially, I will apply the *Wright Line* analysis to these events. As set forth above, General Counsel has shown that Fowler engaged in protected activity and that Respondent 1694 was well aware of Fowler's activity. Next, General Counsel must show that Respondent 1694 interfered with Fowler's employment and that the interference was motivated by Respondent 1694's animus towards Fowler's protected activity.

It is uncontested that after Fowler's hustler accident on March 3, GT USA did in fact suspend Fowler from work with GT USA pending an internal investigation of the incident, which according to General Counsel witness COO Hall was standard procedure. There is no evidence in the record to indicate that Respondent 1694 was responsible in any way for GT USA suspending Fowler from work with that entity, while the accident was being investigated. Thus, I do not find that Respondent 1694 prevented Fowler from working for GT USA on March 5th, as the evidence demonstrates that GT USA was responsible for Fowler's suspension, while the investigation took place.

Next, I turn to whether Respondent 1694 was responsible for blocking Fowler from working for DRS on March 5. The evidence demonstrates that GT USA only temporarily suspended work with GT USA, and COO Hall credibly testified that GT USA could not ban employees from working for other PMTA employers and would only ban an employee from the Port in extreme circumstances such as theft or public safety. He also testified that GT USA would not have banned Fowler from the Port for the hustler accident.

Nevertheless, on March 5, 2022, after Fowler had been assigned to a job with DRS, a different PMTA employer, Respondent 1694's President Miller confronted Fowler at the jobsite, called security and told them that they needed to get Fowler off the Port because he had been banned, and then accompanied security as they escorted Fowler from the Port. Thus, with regard to Fowler's DRS job on March 5, 2022, Respondent 1694 Vice President Miller was responsible for blocking Fowler's ability to work that day for DRS. Next, the General Counsel must show that Respondent 1694 was motivated by Fowler's protected activity when it prevented Fowler from working the DRS job that day.

Inferences of animus and discriminatory motivation may be

warranted under all the circumstances of a case, even without direct evidence. Evidence of suspicious timing (*Adco Electric*, 307 NLRB 1113, 1123 (1992), enfg. 6 F.3d 1110 (5th Cir. 1993)), and false reasons given in defense (*Electronic Data Systems Corp.*, 305 NLRB 219 (1991)) may support an inference of animus and discriminatory motivation.

The Board has held that "[A] finding of pretext necessarily means that the reasons advanced by the employer [union] either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive." *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). In short, a finding of pretext defeats any attempt by the [union] to show that it would have not referred the discriminatee absent his protected activities. *Golden State Foods Corp.*, 340 NLRB 382 (2003).

Certainly, the timing of Miller's action is suspicious in light of the fact that Miller ran Fowler off the jobsite just days after Fowler was finally allowed to return to the Hiring Hall. In addition, Miller's assertion that Fowler was banned from the Port has been shown to be false, as COO Hall testified that Fowler had only been temporarily suspended from work with GT USA and that GT USA had not banned Fowler from the Port. Thus, Miller's purported reason for running Fowler off the Port on March 5th was pretextual as Fowler was not in fact banned from the Port. In its posthearing brief, Respondent 1694 asserts that it cannot be responsible for blocking Fowler's work on March 5th because it does not have the authority to ban employees from the Port. However, it was Miller's actions on the March 5 that prevented Fowler from working for DRS, as DRS had no objection to Fowler working that day, GT USA had not banned Fowler from the Port, and Port Security was just following Miller's directives when it came and escorted Fowler off the Port.

Thus, given the timing and the pretextual reason for Miller's actions on March 5, I find that Respondent 1694 violated Section 8(b)(1)(A) and 2), when Miller told Fowler that he was banned from the Port and called security to remove Fowler from the Port.

(b) Duty of fair representation analysis

Similarly, I find that Respondent 1694 violated the law under the duty of fair representation analysis when Miller told Fowler he was banned from the Port and arranged for security to escort Fowler from the Port. As set forth above, I find that Miller was solely responsible for blocking Fowler from work with DRS on March 5. Respondent 1694's defense was that it could not be responsible for blocking Fowler from the Port because Respondent 1694 had no authority to ban Fowler from the Port. The problem with Respondent 1694's defense is that Miller authoritatively told Fowler that he was banned from the Port (even though it was not true) and then caused Fowler to be escorted off the Port. So, whether he had any authority to do so or not, Miller was solely responsible for blocking Fowler from working for DRS on March 5th.

2. General Counsel alleges that Respondent 1694 violated Section 8(b)(1)(A) and (2) by failing and refusing to refer Fowler to PMTA employers from March 5 to the present

As set forth above, I have found that Respondent 1694 violated Section 8(b)(1)(A) and 8(b)(2) when Miller blocked Fowler from working at DRS on the specific date of March 5, 2022. The Complaint also alleges that Respondent 1694 violated Sections 8(b)(1)(A) and 8(b)(2) when it failed and refused to refer Fowler to employment with PMTA employers after March 5, through the present.

(a) Wright Line analysis

Applying *Wright Line* here, I find that the General Counsel has not overcome its burden to show that Respondent 1694 was responsible for blocking Fowler from work after March 5. The first two prongs of *Wright Line*, that Fowler was engaged in protected activity and that Respondent 1694 was aware of that activity, have already been established above. Next General Counsel must prove that Respondent 1694 adversely affected Fowler's employment opportunities after March 5th through the present, by failing and refusing to refer Fowler through its hiring hall and that such action was motivated by animus.

General Counsel has a difficult burden to overcome here to show that Respondent 1694 failed and refused to refer Fowler out of its Hiring Hall as it is undisputed that Fowler did not return to Respondent 1694's Hiring Hall for work after March 5. It has also been established that Respondent 1694 does not have the authority to ban employees from the Port.[20] General Counsel's theory with regard to this prong is that Fowler reasonably believed that he had been indefinitely banned from the Port based on Miller's words and actions on March 5.

The issue with General Counsel's theory is that Fowler testified that he went to the Hut to seek work at the Port just 3 or 4 days after his run-in with Miller. Fowler's action here shows that he was *not* under the impression that he had been indefinitely banned from working on the Port. Rather it appears that Fowler interpreted Miller's words as indicating that he was banned from the Port just for that day. Moreover, upon arriving at the Hut, Fowler directly asked a GT USA hiring manager if he had any work for Fowler and the GT USA hiring manager (not Respondent 1694) informed Fowler that he had been banned and that he needed to speak with COO Hall. Fowler testified that he then spoke with Hall who told him he could not get a job. Significantly, it was only after this exchange with GT USA, that Fowler stopped coming back to the Port for work. Given the above, I find that the General Counsel has not overcome its burden to show that Respondent 1694 was responsible (either actually or

[20] In its posthearing brief, General Counsel requested that I make the following adverse inference as Respondent 1694 failed to comply with pars. 12, 14, and 18 of the General Counsel's subpoena duces tecum: "That the responsive documents, if produced, would not have corroborated Respondent 1694's evidence and position that it was not responsible for Stanford Fowler's ban from the Port of Wilmington." (GC Br. at 39; GC Exh. 36.) After consideration of General Counsel's request, I decline to make the adverse inference proposed by the General Counsel as there is currently no evidence in the record to support General Counsel's theory that Respondent 1694 was responsible for Fowler's ban from the Port, in fact the evidence in the record shows that Fowler was not, in fact, banned from the Port. Under these circumstances, it would be inappropriate to use and adverse inference to fill the evidentiary gap. *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995); *Quicken Loans*, 367 NLRB No. 112 (2019).

constructively) for blocking Fowler from work at the Port after March 5.

(b) Duty of fair representation analysis

Under the duty of fair representation analysis, for the same reasons set forth above, I find that General Counsel has not overcome its burden of showing that Respondent 1694 was responsible for banning Fowler from the Port or failing and refusing to refer Fowler out to jobs after March 5.

In addition, although not determinative, the fact that Fowler refused to attend the grievance meeting set up for him on May 13, 2022, demonstrates Fowler's mindset that he had given up trying to work at the Port.

In light of all of the above I find no merit to the allegation that Respondent 1694, through Vice President Miller, violated Section 8(b)(1)(A) and (2) of the Act by effectively blocking Fowler's employment with the PMTA employers after March 5, 2022, and I recommend dismissal of this allegation.

CONCLUSIONS OF LAW

1. GT USA is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Longshoremen's Association, AFL–CIO (ILA), and ILA, Local 1694 (Respondent 1694) are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent 1694 violated Section 8(b)(1)(A) of the Act by informing an employee that they should not be writing a letter complaining to the ILA about a merger of ILA local unions affecting their ability to work; and that Respondent 1694 would enforce rules barring certain employee's access to the Local 1694 hiring hall because the employee had complained to the ILA.

4. Respondent 1694 breached its duty of fair representation when it discriminately failed or refused to refer Standford Fowler to employment with the PMTA employers because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership with Respondent 1694 from the period between March 31, 2021, through March 1, 2022.

5. Respondent 1694 discriminately failed or refused to refer Standford Fowler to employment with the PMTA employers because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership with Respondent 1694 from the period between March 31, 2021, through March 1, 2022.

6. Respondent 1694 breached its duty of fair representation when it discriminately failed or refused to refer Standford Fowler to employment with the PMTA employers because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership with Respondent 1694 on March 5, 2022.

7. Respondent 1694 discriminately failed or refused to refer Standford Fowler to employment with the PMTA employers because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership with Respondent 1694 on March 5, 2022.

8. By engaging in the unlawful conduct set forth above, the Respondent 1694 has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) of the Act.

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

REMEDY

Having found that the Respondent 1694 has violated Sections 8(b)(1)(A) and (2) of the Act, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent 1694 violated Section 8(b)(1)(A) of the Act by telling Standford Fowler that he should not write letters to the ILA complaining about Respondent 1694 and threatening to change its hiring hall referral policies in retaliation for Standford Fowler's protected Section 7 activity, Respondent 1694 will cease and desist from this activity.

Having found that Respondent 1694 violated Sections 8(b)(1)(A) and (2) by unlawfully failing and refusing to refer Standford Fowler to employment with PMTA employers from March 31, 2021, through March 1, 2022, Respondent 1694 must make him whole for his lost earnings and other benefits. 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).

Having found that Respondent 1694 violated Sections 8(b)(1)(A) and (2) by unlawfully informing Standford Fowler that he had been banned from the Port of Wilmington on March 5, 2022, Respondent 1694 must make him whole for his lost earnings and other benefits. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, Respondent 1694 shall, within 21 days of the date the amount of backpay is fixed, by either agreement or Board order, file a report allocating backpay with the Regional Director for Region 4. Respondent 1694 will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). Respondent 1694 shall also compensate Fowler for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1 year. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (1914).

Respondent 1694 also shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in Respondent 1694's hiring hall or wherever the notices to members are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet site, and/or other electronic means, if Respondent 1694 customarily communicates with its members by such means. In the event that, during the pendency of these proceedings, Respondent 1694 has gone out of business or closed the facility involved in these

proceedings, Respondent 1694 shall duplicate and mail, at its own expense, a copy of the notice to all current and former members of Respondent 1694 and all current and former employee employed by the PMTA employers at any time since March 31, 2021. When the notice is issued to Respondent 1694, it shall sign it or otherwise notify Region 4 of the Board what action it will take with respect to this decision.

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

ORDER

International Longshoremen's Association Local 1694, AFL–CIO (Respondent 1694) its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling individuals that Respondent 1694 will enforce rules barring them access to its hiring hall because they contacted the International Union to complain about Respondent 1694 or engage in any other dissident union activity.

(b) Failing and refusing to refer individuals from its exclusive hiring hall or tell you that you are banned from seeking employment at the Port of Wilmington, Delaware, for arbitrary or discriminatory reasons.

(c) Causing or attempting to cause any employer that is signatory to its collective-bargaining agreement with the Ports of Delaware River Marine Trade Association (PMTA) to fail to hire individuals for arbitrary or discriminatory reasons.

(d) In any like or related manner restraining or coercing employee 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.

(a) Within 14 days from the date of the issuance of the Administrative Law Judge's decision, notify Standford Fowler in writing that it will make employment referrals available to him in their rightful order of priority.

(b) Make Standford Fowler whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful failure to refer him for employment from its exclusive hiring hall.

(c) Within 14 days from the date of the issuance of the Administrative Law Judge's decision, remove from its files any reference of the failure to refer Standford Fowler, and within 3 days thereafter, notify him in writing that this has been done and that the failure to refer will not be used against him in any way.

(d) Compensate Standford Fowler for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

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

(f) Post at its hiring hall and meeting places copies of the proposed notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent 1694's authorized representative, shall be posted by the Respondent 1694, 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 messaging, posting on an intranet or an internet site, and/or other electronic means, if the Respondent 1694 customarily communicates with its members by such means. Reasonable steps shall be taken by Respondent 1694 to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Within 14 days after service by the Region, deliver to the Regional Director for Region 4 signed copies of the notice in sufficient number for posting by the Employer at the Port of Wilmington, if it is willing, at all places where notices to employees are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent 1694 has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., November 24, 2023

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 representatives 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 restrain or coerce you in the exercise of the above rights.

WE WILL NOT fail and refuse to refer you from our exclusive hiring hall or tell you that you are banned from seeking employment at the Port of Wilmington, Delaware, for arbitrary or discriminatory reasons.

WE WILL NOT tell you that we will enforce rules barring you access to our exclusive hiring hall because you contact the International Union to complain about us or engage in any other dissident union activity.

[21] 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."

WE WILL NOT cause or attempt to cause any employer that is signatory to our collective bargaining agreement with the Ports of the Delaware River Marine Trade Association to fail to hire individuals for arbitrary or discriminatory reasons.

WE WILL NOT refuse to refer Stanford Fowler or any other employee or applicant for employment because of their dissident union activities or membership in a sister local or because of any other unfair and arbitrary consideration.

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

WE WILL, within 14 days from the date of the issuance of the Administrative Law Judge's Decision, notify Stanford Fowler in writing that we will make employment referrals available to him in their rightful order of priority.

WE WILL make Stanford Fowler whole for any loss of earnings and other benefits, including seniority, suffered as a result of our failure to refer him, less any net interim earnings, plus interest, and WE WILL also make him whole for any other direct or foreseeable pecuniary harms suffered as a result of the failure to refer, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask Ports of Delaware River Trade Association (PMTA) member employers, in writing, to remove from its files, any reference to our failure to refer Stanford Fowler, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the failure to refer will not be used against him in any way.

WE WILL compensate Stanford Fowler for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

LOCAL 1694, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/04-CB-280810 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.