

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**INTERNATIONAL ASSOCIATION OF SHEET METAL,
AIR, RAIL AND TRANSPORTATION WORKERS LOCAL
UNION NO. 33 PARKERSBURG DISTRICT (TRI-STATE
ROOFING & SHEET METAL OF OHIO)**

and

Case 06-CB-354820

RYAN BARTELT, AN INDIVIDUAL

Tyler Lingafelt, Esq.
for the General Counsel.
Kera Paoff, Esq.
for the Respondent.
James Devereaux, Esq.
for the Charging Party

DECISION

INTRODUCTION¹

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. The International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 33 (Local 33), through its district unions, has collective-bargaining agreements with various trade associations, including Sheet Metal Contractors Association of West Virginia (SMART) and SMACNA of North Central Ohio, Inc., (SMACNA).² The agreements with SMART and SMACNA require that covered employers use the union's referral system when they need additional employees, and the union agrees to fulfill those requests free of any discrimination based on the employee's union membership status.

In early October 2024, Ryan Bartelt, a nonmember, contacted Local 33's business representatives seeking referral to a construction project at the Ford Motor Company assembly plant in Avon Lake, Ohio (the Ford project). On October 8, 2024, Pat Allen, the business representative for Local 33's Parkersburg District (the Respondent), informed Bartelt, by text message, that the union would not refer nonmembers for jobs. Thereafter, Bartelt filed charges alleging the Respondent had violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act). (GC Exhs. 1(a) and (c)). Based on the charges, the Regional Director, on behalf of the General Counsel, issued a complaint on March 16, 2026, alleging that Allen's text message constituted an unlawful threat. (GC Exh. 1(e)). On March 27, 2026, the Respondent filed its answer denying the allegation and raising various affirmative defenses. (GC Exh. 1(g)). With the consent of all the parties, I held this hearing via videoconference

¹ Abbreviations in this decision are as follows: "Tr. ____" for Transcript; "Jt. Exh. ____" for Joint Exhibits; "GC Exh. ____" for the General Counsel Exhibits; "R Exh. ____" for the Respondent's Exhibits. Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based upon my review and consideration of the entire record.

² SMACNA is the abbreviation for the Sheet Metal and Air Conditioning Contractors' National Association.

on June 9, 2026, during which the parties were afforded the opportunity to present evidence and examine witnesses. The parties later filed post-hearing briefs, which I have carefully considered.

The primary issue in this case is whether the Respondent operated an exclusive or nonexclusive referral system at the time Allen sent his October 8 text message. If it was exclusive, the Respondent had a duty not to threaten to discriminate against employees based on their union membership status. If it was nonexclusive, there was no such duty. For the reasons discussed below, I conclude the Respondent operated an exclusive referral system, and that Allen's text message violated Section 8(b)(1)(A) of the Act.

FINDINGS OF FACT

A. Jurisdiction and Labor Organization Status

Tri-State Roofing and Sheet Metal of Ohio (Tri-State Roofing) is a contractor with a facility in Davisville, West Virginia, where it has been engaged in the business of providing roofing, sheet metal, and heating ventilation and air conditioning (HVAC) construction services. (Jt. Exh. 2). Annually, Tri-State Roofing purchases and receives goods at its facility valued in excess of \$50,000 directly from points outside the State of West Virginia. Id. Tri-State Roofing is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Jt. Exh. 9).

The Respondent and Local 33 are both labor organizations within the meaning of Section 2(5) of the Act. Local 33 is made up of nine geographic districts (Toledo, Vermilion, Cleveland, Akron, Youngstown, Wheeling, Parkersburg, Clarksburg, and Charleston) covering counties in West Virginia, Ohio, Michigan, and Pennsylvania. The Respondent has jurisdiction over counties in southeastern Ohio and northwestern West Virginia, and the Vermilion District has jurisdiction over counties in northcentral Ohio.

At all material times, Allen has been the business representative for the Respondent, and Mike Friend has been the business representative for the Vermilion District. Both are admitted agents of the Respondent within the meaning of Section 2(13) of the Act. (GC Exhs. 1(e) and(g)) (Jt. Exh. 9).

B. Collective-Bargaining Relationships

SMART is a trade association composed of ten signatory employer-members in the building and construction industry. One purpose of SMART is to represent its members in negotiating and administering collective-bargaining agreements with the Respondent. (Jt. Exh. 9). The current agreement between the Respondent and SMART is dated June 1, 2023, through May 31, 2027 (SMART Agreement), and it applies to all covered work performed within the Respondent's jurisdiction. (Jt. Exhs. 1 and 9). The Respondent is the exclusive bargaining representative of the following unit:

All employees engaged in, but not limited to, the (a) manufacturing, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and all HVAC systems, exhaust systems, airveyor systems and air handling systems regardless of material used, including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging installation and all duct lining; (c) testing, balancing and servicing of all HVAC air-handling

equipment and duct work; (d) the preparation of all shop and field sketches, whether manually drawn or computer assisted used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; and (e) all architectural work including, but not limited to: composite, ACM, insulated, double-wall and single-wall sheet metal panels, sheet metal roofs, cornice work, coping, flashing, gutters, downspouts and decorative metals; vendor supplied material is exempt (f) all other work included in the jurisdictional claims of the Respondent.

(GC Exh. 1(e) and (g)).³

SMACNA is a trade association composed of seven employer-members in the building and construction industry. One purpose of SMACNA is to represent its members in negotiating and administering collective-bargaining agreements with the Vermilion District. (Jt. Exh. 9). The current collective-bargaining agreement between the Vermilion District and SMACNA is dated June 1, 2023, to May 31, 2028 (SMACNA Agreement), and it applies to covered work performed within the Vermilion District's jurisdiction. (Jt. Exh. 3). Addendum A of the SMACNA Agreement states the Vermilion District, upon proof of majority support, will be the exclusive bargaining representative for all employees of the covered employer(s) in the classifications and geographic jurisdiction covered by the Agreement, regardless of whether the employees are members of Local 33. (Jt. Exh. 3, pg. 28).

C. Contractual Referral Procedure

The SMART and SMACNA Agreements contain similar provisions addressing the referral of employees. Article IV of the SMART Agreement states the Respondent "agrees to furnish upon request by the Employer duly qualified journeymen, apprentice and classified sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in this Agreement." (Jt. Exh. 1, pg. 5). Addendum M to that Agreement states:

It is mutually agreed among the parties hereto that the following conditions shall govern all referrals of applicants for all positions within the scope of the Agreement between the parties ... and shall supersede any contract provisions which may be contained in said Agreement.

SECTION 1: Any Employer in need of additional employees shall call the Union office or submit his request in writing.

SECTION 2: The Union agrees to furnish to the Employer(s) hereto journeymen sheet metal workers in sufficient number as may be necessary to properly execute the work contracted for by the Employer(s) in the manner and under the conditions specified in this Section.

SECTION 3: The Union agrees to select and refer all applicants for employment without discrimination against such applicants by reason of, or in any way affected by, Union membership, by-law regulations, constitutional provisions, or any other aspects of obligation of Union membership, policies or requirements. Further, there shall be no discrimination because of race, color, creed, national origin, age or sex.

³ Addendum L of the SMART Agreement states the Respondent, having demonstrated to the member employer its majority support among the employees covered by the Agreement, is the exclusive bargaining representative of those employees. (Jt. Exh. 1, pg. 48).

SECTION 4: The Employers shall have the right to reject any applicants for employment.

SECTION 5: In order for the applicant to gain access to the various industries within the jurisdiction of [the Respondent] and substantiate that he has been referred to a particular Employer, he shall report to the Union office and receive his referral in quadruplicate. Said referral shall contain the name of the Employer to whom he is referred, his name, address, telephone number, social security number, etc. He will also receive an authorization for working dues deduction, savings deductions.

SECTION 6: If, within a period of forty-eight (48) hours the Employer cannot obtain employees under the hiring procedure as set forth in this Section, he shall be permitted to hire from any other source whatsoever, and such employees shall apply for membership in the Union as set forth in [the Agreement]

SECTION 7: The signatory Employer shall have the right to recall a former employee. A journeyman may solicit his own job from a signatory Employer, providing [sic.] when he secures such a job, he obtains a referral slip from the Union Hall.

SECTION 8: Both the Union and the Employer agree to post a copy of the referral procedure set forth in this Section in places where notices to employees and applicants for employment are customarily posted.

(Jt. Exh. 1, pgs. 48-50).

Article IV, Section 1 of the SMACNA Agreement states the Vermilion District “agrees to furnish upon request by the Employer duly qualified journeyman and apprentice sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the matter and under the conditions specified in this Agreement.” (Jt. Exh. 3, pg. 3). Addendum L to that Agreement states:

It is mutually agreed among the parties hereto that the following conditions shall govern all referrals of applicants for all positions within the scope of the Agreement between the parties and shall supersede any contract provisions which may be contained in said Agreement.

1. Any Employer in need of additional employees shall call the Union office or submit their request in writing.

2. The Union agrees to furnish to the Employer or Employers journeymen sheet metal workers in sufficient number as may be necessary to properly execute the work contracted for by the Employer or Employers in the manner and under the conditions specified in this Section.

3. The Employer and the Union agree that they will not discriminate on the basis of race, color, religion, sex, age, disability, gender identity or national origin against any person with reference to recruitment, hiring, promotion, demotion, transfer, rates of pay or other terms and conditions of employment, selection for apprentice training, layoff or termination of employment. The parties hereto agree that all membership in either the apprenticeship program or as a journeyman in the Union shall be based upon qualifications alone and without regard to a person's protected status. The Union agrees to select and refer all applicants for employment without discrimination against any such applicants by reason of, or in any way affected by, Union membership, bylaw regulations, constitutional provisions, or any other aspects of obligation of Union membership, policies or requirements.

4. The Employers shall have the right to reject any applicants for employment.

5. In order for the applicant to gain access to the various industries within the jurisdiction of [the Vermilion District] and substantiate that they have been referred to a particular employer, they shall report to the union office and receive their referral in quadruplicate. Said referral shall contain the name of the employer to whom they are referred, their name, address, telephone number, social security number, etc. They will also receive an authorization for working dues deduction, savings deduction and reason for dismissal or refusal of the employer to hire the applicant.

6. If, within a period of forty-eight (48) hours the Employer cannot obtain employees under the hiring procedure as set forth in this Section, they shall be permitted to hire from any other source whatsoever, and such employees shall apply for membership in the Union as set forth in [the Agreement]

7. The Employer shall have the right to recall a former employee provided a period of no more than sixty (60) days has expired.

8. Both the Union and the Employer agree to post a copy of the referral procedure set forth in this Section in places where notices to employees and applicants for employment are customarily posted.

(Jt. Exh. 3, pgs. 62-63).

In addition to the agreements, Local 33 has rules and procedures regarding available-for-work lists and referrals. (Jt. Exh. 7). The rules state that each district union within Local 33 must maintain two available-for-work lists: List A is for the district union's members, and List B is for members of other Local 33 district unions. The rules further state that only members in good standing are eligible to be placed on these lists. A member may not add their name to a list if they are currently employed, except they may remain on their home district's List A while working outside the district union's jurisdiction. When a covered employer calls for referrals, the district union will call members on List A, in order, and then call members on List B, in order. However, referrals may be made out of order if the employer requests employees with certain skills that those higher on the list do not possess. Finally, the rules allow covered employers the right to request members by name, and they allow covered employers to refuse a member for any non-discriminatory or non-retaliatory reason.

D. Evidence Regarding Referral Practice

The parties presented witnesses who testified about their practices in operating or using the district unions' referral systems.

1. The General Counsel's Witness

The General Counsel presented Derek Krause, a field superintendent for Giffin USA, which is an Auburn Hills, Michigan-based contractor that performed work on the Ford project. Giffin has a collective-bargaining agreement with Sheet Metal Workers Local 292, which is based in Detroit. (Tr. 33-34; 36).⁴ When Giffin performs sheet metal work within Local 292's jurisdiction, Krause will go through Local 292's referral system to obtain employees. When Giffin performs sheet metal work outside of Local 292's jurisdiction, Krause's understanding is that he is required to contact the local

⁴ The agreement between Giffin and Local 292 was not introduced into evidence.

Sheet Metal Workers union for the area where the project is located and follow their referral procedures to obtain workers for that project. (Tr. 38, 40-42, 49).

5 Giffin worked on the Ford project for about 2.5 years. The project is in Lorain County, which is within the Vermilion District's jurisdiction. During that time, Krause requested and received hundreds of sheet metal workers through the Vermilion District's referral system. (Tr. 39-42). He would email business representative Mike Friend to request workers, and Friend would refer qualified employees if they were available. (Tr. 39-40). Krause did not fill any of the positions without first contacting Friend and going through the referral system; it never posted for jobs or hired off the street. 10 (Tr. 40-42).⁵ If the Vermilion District did not have qualified members available, it would contact the international union to find qualified members from other local unions across the country, who, if available, would be referred to the project. (Tr. 40).

15 There were instances when Giffin requested individuals by name for the Ford project. One individual Krause requested by name was Azure Khoury, a sheet metal worker who had been recommended by another employee on the project. On September 25, 2024, Krause emailed Friend asking for four journeymen and Khoury. On October 1, Friend referred Khoury and five others to the project. The following day, Krause's supervisor emailed Friend stating that Khoury found work back home and was not available. (R. Exh. 1).

20 Two other individuals Krause requested by name were Doug Arnold and Solon Foster, both members of Local 292. Giffin had to weld phosphate tanks on the Ford project, which required training and certifications. (Tr. 43-44). Krause contacted Friend about this. He learned that the Vermilion District had welders available, but they did not have the necessary certifications. Krause then told 25 Friend about Arnold and Foster. He stated he knew they had the necessary certifications, and he requested that one or both be referred to the project. (Tr. 51-52). Friend later referred out Arnold.⁶

2. The Respondent's Witnesses

30 The Respondent presented multiple witnesses who testified about their practices in operating and/or using the referral systems.⁷ Its primary witness was David Larson, Local 33's financial secretary, treasurer, recording secretary, and vice president since 2021. (Tr. 63). Prior to that, Larson was the business representative for the Vermilion District for about 21 years. (Tr. 64). In these roles, he was involved in negotiations over the SMART and SMACNA Agreements. He testified the 35 language in Addendum M of the SMART Agreement and in Addendum L of the SMACNA Agreement have remained unchanged for several years. (Tr. 68). During the most recent negotiations, there were no proposals or discussions about the referral systems. (Tr. 76-77; 80-81). Larson testified the referral procedures have "never been an issue. We – for lack of a better description ... when our CBAs open

⁵ Bartelt testified that in October 2024, he called and spoke to an individual who worked for the general contractor on the Ford project about getting a job there. The individual told Bartelt that sheet metal workers were hired through the Vermilion District's referral system and recommended that Bartelt contact Mike Friend if he wanted to be referred out. (Tr. 21-22). Bartelt could not recall the individual's name or position. Although this testimony is unattributed hearsay, it is consistent with Krause's description of Giffin's practice for getting sheet metal workers for the project.

⁶ Krause also testified about Robert Good. Good came from Pennsylvania to work on the Ford project. Krause contacted Good and then directed him to Friend for referral. Good was later referred to the project. (Tr. 42-43). The record does not reflect the specific circumstances surrounding his referral.

⁷ Neither Mike Friend nor Pat Allen was called as a witness to describe their practices in handling referrals.

up, and we work through the language, we're usually touching on things that have been buttons in the previous term of that agreement... These sections have not come up, ever..." (Tr. 80-81).

5 According to Larson, Local 33 has never sought to enforce the referral provisions in either of
the Agreements. (Tr. 67-70). The district unions do not require that the covered employers go through
the referral system to obtain employees, and they do not require that members go through the referral
system to obtain jobs. He testified, "[c]ontractors are free to hire somebody, if they find a talented
individual that's not a member they can hire them, and then we will sign them up. Or if there are
members available for work ..., and they reach out to a contractor and ask them if they're hiring, they
10 can hire them that way. Then that member has an obligation to contact the Union Hall for a referral."
(Tr. 67).⁸

15 The Respondent also presented Thomas Martin, Jr. He is the president of TH Martin, which is
a contractor in Cleveland and Akron, Ohio. (Tr. 57). TH Martin is signatory to the collective-
bargaining agreement between SMACNA and the Cleveland District, which contains different referral
procedures than those in the SMART and SMACNA Agreements. (Jt. Exh. 8).⁹ Martin estimated that
his company obtains about 60-70 percent of its employees through the Cleveland District's referral
system. The remaining 30 percent are active union members who call looking for work, and he will
hire them through the referral system. (Tr. 62). Those members normally report with referral slips.
20 (Tr. 61). Martin testified that, in his experience, the Cleveland District has never sought to enforce
violations of the referral procedures. (Tr. 59-60).

25 The Respondent also presented Josh Tullius. Tullius is vice president of Murray Sheet Metal
Company, which is a contractor based near Parkersburg, West Virginia. (Tr. 86). Murray Sheet Metal
is signatory to the SMART Agreement. Tullius testified that, in the last few years, Murray has probably
hired 30-35 employees, and only "a couple" have come from the Respondent's referral system. Most
applied on their own or were hired through job fairs or career centers. (Tr. 86). About half of the time
when Murray hires without going through the referral system, Tullius knows from communications
with the Respondent's business representative(s), or from his role on the Respondent's apprenticeship
30 committee, that the Respondent does not have any qualified employees available, which is why the
company looks to these other sources. (Tr. 91-92).

⁸ A referral slip is a record created through the Respondent's membership system that contains the member's name, address, telephone number, age, and last four of their social security number. It also has the name and address of the contractor they are going to work for, the address of the job site, and the wage rate and benefits that are paid based on the classification. (Tr. 70).

There is a dispute over whether the referral slip was a prerequisite to working for a covered employer, or simply a record keeping document to ensure employees are paid the contractual wages and benefits after the employee obtains the job. Both the SMART and SMACNA Agreements have nearly identical language on this point. As quoted above, both state that for an applicant to gain access to the various industries within the district's jurisdiction "and substantiate that they been referred to a particular Employer," they shall report to the district office and receive their referral slip. Based on this language, I conclude the referral slip confirms the employee has been referred out by the district union and is permitted to work for the employer.

⁹ The collective-bargaining agreement between SMACNA and the Cleveland District contains different language regarding use of the referral system. Specifically, Addendum A, Section 1 states that "any Employer in need of additional employees *may* call the district office or submit his request in writing." (Jt. Exh. 8, pg. 24) (emphasis added). The use of "may" rather than "shall" (like in the SMART and SMACNA Agreements) indicates the referral system is voluntary, as opposed to mandatory, for the covered employers.

Before he became vice president of Murray Sheet Metal Company, Tullius was a sheet metal worker represented by Local 33 district unions. He testified he routinely obtained jobs without going through their referral systems. (Tr. 85).

In 2016-2017, Tullius was a business representative for the Respondent. During that period, he does not remember ever filing a grievance against a covered employer for not following the contractual referral procedure. (Tr. 87-88). Additionally, when members came to him and wanted to be added to the available-for-work list(s), he would add them to the list(s) and then refer them when jobs became available. But he was aware that there were members who obtained work on their own, with a former employer or a new employer. In those situations, he would write them a referral slip to go work those jobs. (Tr. 85).

The Respondent also presented members. Larry Farley works for a contractor covered by the SMART Agreement. He has been a member of the Respondent for 15 years, during which he has worked for several contractors. He estimated that about 75 percent of the jobs he obtained on his own, and about 25 percent of the jobs he obtained through the Respondent's referral system. (Tr. 109-110). He did not provide specifics, including who those contractors were or whether they were signatory to a particular agreement, and, if so, what it stated regarding the referral process.

David Williams is a retired member. He retired in 2024. He estimated that during his career he worked for about eight contractors. He estimated two of the jobs he obtained through the referral system, and the rest he obtained on his own. (Tr. 96-97). He worked for the last contractor from 2016 to 2024. Like Farley, Williams did not provide specifics, including who the contractors were or whether they were signatory to a particular agreement, and, if so, what it stated about referrals.

William McGee, Jr. is another retired member. He also retired in 2024. He was referred out for his first job in 1984, for a company called Singers. He worked there for around 20 years. He then went to the union hall and signed the available-for-work list, and the next day he was referred out for a job. While on that job, Tri-State Roofing contacted him directly about a position, and he went to work for that company for about six months. When that job was over, he notified his union business representative that he was out of work, and he was referred back to work for Singers. He worked there for several years before quitting and returning to Tri-State Roofing. He left that job to become a construction manager for a company, where he worked until 2017. He then worked for another company as a contractor administrator until 2021. He was later referred to a project in Pittsburgh (outside Local 33's jurisdiction) for a few months. He then went back to his construction manager position, where he worked until his retirement. (Tr. 102-103). Aside from Tri-State, it was unclear whether the other contractors were signatory to an agreement with a Local 33 district union, and, if so, what the agreement stated regarding the use of the referral process.

E. *Alleged Unfair Labor Practices*

Tri-State Roofing is signatory to the SMART Agreement. (Jt. Exh. 1, pg. 67). Ryan Bartelt began working for Tri-State Roofing as a sheet metal installer in April 2021. (Tr. 15). At around that time, he became a member of the Respondent. He later resigned his membership and became a *Beck* objector. (Jt. Exh. 4).¹⁰

¹⁰ Federal law allows unions and employers to enter into "union-security" agreements requiring all employees in a bargaining unit to become union members and begin paying union dues and fees. Employees may choose not to become union members and pay dues, or they may opt to pay only that share of dues used directly for representation, such as collective bargaining and contract administration. Those that opt

Bartelt has worked consistently for Tri-State Roofing since his employment began, but there have been periods when he has been briefly laid off. (Tr. 25-26). In early October 2024, Bartelt learned he would be laid off for a short period due to a lack of work. (Tr. 26). He spoke with two co-workers, who told him they planned to seek referral to work at the Ford project.

On October 4, 2024, Bartelt emailed Mike Friend and informed him he was interested in being referred out to the Ford project with the others. (Jt. Exh. 5, pg. 1, 9). The two exchanged text messages about this. Bartelt also exchanged text messages with Pat Allen, the Respondent's business representative. On October 8, Allen texted Bartelt informing him that Friend "will not be referring out a nonmember for jobs." (Jt. Exh. 5, pg. 3). Bartelt replied, asking why he could not be referred out as a *Beck* objector, adding that he did not have to be a union member to work on a union job. (Jt. Exh. 5, pg. 4). He threatened to file grievances and unfair labor practice charges against the Respondent accusing it of discrimination based on his nonmember status. (Jt. Exh. 5, pgs 4-6). Friend later informed Bartelt that the contractor had reduced the number of employees needed, and that a few employees had been turned away. (Jt. 5, pg. 10-11). Bartelt disputed this claim. (Jt. Exh. 5, pg. 11).

Bartelt later exchanged communication with David Larson. He accused Larson and Local 33 of discriminating against him in the operation of its exclusive referral systems. On February 14, 2025, Larson wrote Bartelt a letter responding to his accusations. (Jt. Exh. 6). In the letter, Larson denied that Local 33 operated an exclusive referral system. He added, "Regardless, the CBA does not govern the rules of the referral halls; rather, the unions establish their own rules. Put another way, the agreements govern the relationship between the Union and the contractor, not the relationship between the Union and its members or non-members." (Jt. Exh. 6, pgs. 1-2).

LEGAL ANALYSIS

A. Overview

The General Counsel alleges that: (1) since about June 1, 2023, the Respondent has, by agreement and practice, operated an exclusive referral system; and (2) on October 8, 2024, the Respondent violated Section 8(b)(1)(A) of the Act when Pat Allen, by text message, threatened employees that the Respondent would not refer nonmembers out for jobs.¹¹ Section 8(b)(1)(A) makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights guaranteed under Section 7 of the Act, but it does not impair the union's right to prescribe its own rules on the acquisition or retention of membership. Section 7 guarantees employees the right to self-organization, to form, join, or assist unions, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from these activities.

It is well established that a union operating an exclusive referral system owes a duty of fair representation to all employees using the system, regardless of their membership status. See *Breining v. Sheet Metal Workers Local 6*, 493 U.S. 67, 87-88 (1989). See also *Stage Employees IATSE Local 720*, 363 NLRB 1485, 1490 (2016), *enfd.* 718 Fed.Appx 512 (9th Cir. 2017); *Radio-Electronics*

out are known as *Beck* objectors, in reference to *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), and while they are no longer union members, they remain protected by the parties' collective bargaining agreement, and the union owes them a duty of fair representation.

¹¹ There is no allegation the Respondent violated the Act by refusing to refer Bartelt out to the Ford job.

Officers Union, 306 NLRB 43, 44 (1992). This duty of fair representation prohibits the union from acting in an arbitrary, discriminatory, or bad faith manner. See *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). The courts have held a union operating an exclusive referral system has this duty because it wields special power over the employees' livelihood, and this increased control over the employees' access to employment opportunities increases rather than decreases the union's responsibility to act in a fair and nondiscriminatory manner. See, e.g., *Lucas v. NLRB*, 333 F.3d 927, 932 (9th Cir. 2003).

A union breaches its duty of fair representation and violates Section 8(b)(1)(A) when it operates its exclusive referral system in a way that favors members over nonmembers. See *International Longshoremen Association Local 1423*, 306 NLRB 942, 946 (1992); *Plumbers Local 305*, 282 NLRB 83, 88 (1986); *Bricklayers Local 7*, 224 NLRB 206 (1976), *enfd.* 563 F.2d 977 (9th Cir. 1977). The same is true when the union makes statements that reasonably create the impression that it will operate its exclusive referral system in a way that favors members over nonmembers. *Plumbers Local Union No. 630*, 222 NLRB 524, 528 (1976). In contrast, a union operating a nonexclusive referral system owes no duty to nonmembers because it lacks the power or control to put jobs out of their reach. See *Carpenters Local 537*, 303 NLRB 419, 420 (1991); *Teamsters Local 460*, 300 NLRB 441, 441 (1990); *Teamsters Local 17*, 251 NLRB 1248, 1257 (1980).¹²

The word "exclusive," with respect to a referral system, denotes the degree to which hiring is reserved to the union. See *Breining v. Sheet Metal Workers International Association Local Union No. 6*, 493 U.S. at 71 fn. 1 (1989). A referral system is exclusive if it is an employer's initial or primary source for employees. See *LASTSE Local 720*, 363 NLRB 1485, 1492-1493 (2016), *enfd.* 718 Fed. Appx. 512 (9th Cir. 2017). The system remains "exclusive" if, for example, the union retains sole authority to supply employees up to a designated percentage of the employer's workforce or for some specified period, such as 24 or 48 hours, before the employer can hire on his own. *Breining*, 493 U.S. at 71 fn. 1. It also remains "exclusive" when the employer has the right to reject individuals referred by the union, or the employer has a right to use a certain number or percentage of its own employees for a job. *Id.* See also *Theatrical Wardrobe Union Local 769*, 349 NLRB 71, 72-73 (2007); *Pipefitters Local 247*, 332 NLRB 1029, 1031-1032 (2000); *Ironworkers Local 843*, 327 NLRB 29, 31 (1998). The same is true when the employer is permitted to request employees by name. See *Millwrights and Machinery Erectors Local Union No. 2834*, 268 NLRB 150, 156 (1983). Likewise, an exclusive referral system exists when employees must first be routed, cleared, or registered with the union before they may be hired by the employer. See, e.g., *Plumbers Local Union No. 17*, 224 NLRB 1262, 1263 (1976); *Operating Engineers, Local 513*, 197 NLRB 1046, 1049 (1972). Finally, exceptions and other special circumstances to the exclusivity of the arrangement do not negate the finding of an exclusive arrangement. See *Morrison-Knudsen Co.*, 291 NLRB 250, 258 (1988); *Laborers Local 394*, 247 NLRB 97, 101 (1980).

¹² The Respondent contends that regardless of whether the referral system is exclusive or nonexclusive, there can be no violation because Local 33's referral rules bar applicants from being placed on the available-for-work lists while they are currently employed, and Bartelt was employed with Tri-State Roofing at the time he contacted Friend and Allen about being referred out to the Ford project. In reviewing the record, I find that Bartelt's employment status was irrelevant to determining whether Allen's message constituted an unlawful threat. First, the rules require that an individual be a member in good standing before they can have their name placed on the available-for-work lists. As such, Bartelt, as a nonmember, was precluded from adding his name to the lists, regardless of whether he was working or not. Second, Allen's message was not limited to Bartelt; it threatened to bar the referral of all nonmembers.

The parties may create an exclusive referral arrangement by written or oral agreement or by practice. *Teamsters Local 492*, 369 NLRB No. 75, slip op. 1 fn. 3 (2020) (citing *Plumbers Local 198*, 319 NLRB 609, 611-612 (1995)). The burden of establishing an exclusive arrangement in this case rests with the General Counsel. See *IATSE Local 142*, 361 NLRB 1398 (2014); *Iron Workers Local 377*, 326 NLRB 375, 387 (1998); *Carpenters*, 303 NLRB at 420.

The inquiry begins with the parties' written agreement. Where the terms of the agreement clearly establish an exclusive referral arrangement, the inquiry ends. See *IBEW Local 11*, 270 NLRB 424, 425-426 (1984), *enfd.* 772 F.2d 571 (9th Cir. 1985). In general, Board precedent prohibits the use of extrinsic evidence to vary the clear and unambiguous terms of the parties' agreement. See *Quality Building Contractors, Inc.*, 342 NLRB 429, 430 (2004); *America Piles, Inc.*, 333 NLRB 1118 (2001); *W. J. Holloway & Son*, 307 NLRB 487, 487 fn. 1 (1992); *NDK Corp.*, 278 NLRB 1035 (1986). See also *NLRB v. Electrical Workers Local 11*, 772 F.2d 571, 575 (9th Cir. 1985), *enfg.* 270 NLRB 424 (1984). Where the terms of the agreement are unclear or ambiguous on whether there is an exclusive referral arrangement, the Board will examine the totality of the circumstances, including the parties' interpretation of the agreement and their practice in submitting and responding to referral requests. See *Local Union No. 174, Int'l Bhd. of Teamsters*, 226 NLRB 690, 690 (1976).

B. The Agreements Clearly Establish an Exclusive Referral System

The General Counsel argues that the language of the SMART and SMACNA Agreements both clearly establish an exclusive referral arrangement. Addendum M of the SMART Agreement and Addendum L of the SMACNA Agreement contain mandatory language. Both require that covered employers go through the district union's referral system when seeking to add employees to perform covered work ("[a]ny Employer in need of additional employees *shall* call the Union office or submit his request in writing" (emphasis added)), and they both require that the district union refer qualified employees to fill those requests ("agrees to furnish upon request ... duly qualified [employees] in sufficient number ... to properly execute work contracted for by the Employer ..."). If after 48 hours from the request the union is unable to make the referrals, the employer is permitted to hire employees from another source. Based on this language, the union's referral system must be the employer's sole source for additional employees during the first 48 hours after the request is made, which, as stated above, establishes an exclusive referral arrangement.

C. Inconsistent Practices of Certain Employers or Members Do Not Vary or Negate the Clear Referral Provisions in the Agreements

The Respondent argues that regardless of what the Agreements state, the referral systems are, in practice, nonexclusive. It relies on the testimony from its witnesses that, over the years, certain covered employers, on occasion, obtained employees without going through the referral system, and that, over the years, certain members, on occasion, obtained employment without going through the referral system.¹³ And when this happened, Local 33 did not seek to enforce the referral provisions.

As for the employers who occasionally obtained employees without initially going through the referral system, the witnesses consistently testified that when they found an individual they wanted to hire they sent them to the district union for it to issue a referral slip allowing the individual to work for

¹³ Martin's testimony is largely irrelevant because, as stated, TH Martin was signatory to the Cleveland District's agreement with SMACNA, and that agreement states covered employers "may" use the referral system, as opposed to "shall," indicating that it is optional and not mandatory

the employer. This indicates an understanding among the parties that the individual first had to be cleared or routed by the union before they could go to work for the covered employer. This process is similar to a union requesting a referral by name and the union referring that individual out to work for the employer, which Local 33's referral rules specifically allow.

5

Regarding the members who occasionally obtained employment without first going through the referral system, the SMART and SMACNA Agreements do not prohibit this.¹⁴ In fact, Addendum M, Section 7 of the SMART Agreement states that "A journeyman may solicit his own job from a signatory Employer, [provided that] when he secures such a job, he obtains a referral slip from the Union Hall." This is consistent with the union's exclusive role in clearing or routing the employee to go to work for the covered employer.

10

Even if this was not the case, the Board has held that the parties' inconsistent practices do not vary or negate the clear and unambiguous terms of their written agreement establishing an exclusive referral arrangement. In *Bricklayers Local 8*, 235 NLRB 1001 (1978), the parties' agreement stated:

15

When an employer needs [employees], he shall notify the Local Union ... at least twenty-four (24) hours in advance, if possible; upon such notice being given, the Local Union agrees that it will furnish an adequate supply of qualified journeymen if they are available. Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on or in any way affected by Union membership ... The employer reserves the right to reject for good cause any job applicant referred by the Union and the employer shall be the sole judge of the qualifications of the employees on his job.

20

25

Despite this clear language, the union argued its referral system was nonexclusive based on the practices of a few of its covered employers. The first employer testified that when he needed employees, he primarily rehired individuals who worked for him in the past. If additional employees were needed, he would call the union and ask for referrals. He estimated he did that about six times a year. He never hired off the street or hired employees referred by other contractors. The second employer offered similar testimony. The third employer testified that when he needed employees, he primarily rehired former employees, hired employees referred by other employees, hired employees off the street, and/or traded with other contractors. He seldom would seek referrals from the union hall, estimating that it only happened about once a year. *Id.* at 1003.

30

35

The judge held, and the Board adopted, that the parties had an exclusive referral arrangement based on the clear and unambiguous terms of their agreement, and the procedures outlined therein were mandatory. As for the exceptions, the judge noted that of the many employers who used the referral system, only three testified about their practices, and they were "simply ignoring the clear language of the [agreement]." *Id.* at 1003. The judge further held:

40

No amount of talking by the parties in interest, sworn statements or not, can serve in the least to make disappear the written contract in effect and binding [the employer and

¹⁴ In contrast, Addendum A, Section 5 of the agreement between SMACNA and the Cleveland District states that "[a] member of the Cleveland District only may seek employment with [a signatory contractor] ... and in order for the applicant to gain access to the various industries within the jurisdiction of Local No. 33 and substantiate that he/she has been referred to a particular Employer, he./she shall report to the Union office and receive his/her referral in quadruplicate." (Jt. Exh. 8, pg. 24).

the union] to an exclusive hiring hall. Their bland assertions that nobody paid any attention to that contract clause, and only that contract clause, serves only to discredit the defense all the more.

5 Id. at 1003 (quoting *Carpenters Local No. 78*, 223 NLRB 733, 736 (1976)).

10 In *Boston Cement Masons and Asphalt Layers Union No. 534*, 235 NLRB 826, 827 (1978), rev'd and remanded on other grounds, 590 F.2d 15 (1st Cir. 1978), the parties' agreement required that the employer notify the union of all job vacancies prior to filling them, and to give the union the opportunity to refer qualified applicants to fill those vacancies, but there was evidence that this language was not consistently followed or enforced by the parties. Despite the exceptions, the Board found an exclusive referral arrangement. It held as follows:

15 There is no dispute that the agreement between [the Union] and the Employer was in effect at all times material. Nor is there any dispute that [the Union] operates a referral system. The evidence that the Employer had in the past hired workers directly merely shows that the Union did not always insist on its contract provision that it be the exclusive source of employees. This does not, however, change the plain meaning of the collective-bargaining agreement. Nor does it follow that [the Union] had
20 relinquished and waived its contractual rights by allowing the Employer to hire directly in the past.... [The Union's] failure in the past to insist upon rigid enforcement of the provisions of the agreement does not mean that it waived its right to do so in the future.

235 NLRB at 827-828.

25 Finally, in *Int'l Brotherhood of Teamsters, Local 38*, 146 NLRB 1627, 1629 (1964), the union and several of its locals were signatory to a labor agreement with various chapters of a trade association. The agreement contained provisions that required covered employers to go through the union's hiring hall to obtain certain classifications of employees, but the union chose not to strictly enforce those
30 provisions. Signatory contractors occasionally hired employees, and members and nonmembers occasionally obtained jobs, without going through the hiring hall. Despite this evidence, the judge held, and the Board adopted, that because the relevant provisions of the agreement were never formally amended or modified, and there were certain signatory contractors who considered themselves bound by those provisions, the union operated an exclusive hiring hall because it retained the right, under the
35 agreement, to bind the signatory employers to the hiring hall provisions.

40 As stated, the SMART and SMACNA Agreements both contain provisions clearly establishing an exclusive referral arrangement, and the parties kept those provisions unchanged when they renewed the Agreements effective June 1, 2023, four months prior to Bartelt contacting Local 33 seeking referral to the Ford project. According to Larson, there were no proposals or discussions about the referral provisions during these negotiations. As such, there is no basis for claiming waiver or that the parties intended something other than the clear and unambiguous referral terms they signed off on in the current Agreements.

45 ***D. The Specific Practice At Issue Supports an Exclusive Referral Arrangement***

The General Counsel further argues there is an exclusive referral arrangement based on the established practice that existed between Giffin and the Vermilion District regarding the referral of

sheet metal workers to the Ford project. Krause's practice on behalf of Giffin was to go through the Vermilion District's referral system each time he needed to add employees. This happened hundreds of times during the 2.5 years Giffin was on the project. The Respondent argues Krause's practice is irrelevant because Giffin was not signatory to the SMART or SMACNA Agreements. While true, it does not end the inquiry. The Board has held that in the absence of a written agreement, where it is the consistent practice of the employer to request and hire those referred by the union, and both parties knowingly participate in this practice, an exclusive referral arrangement exists. See *Ohio Valley Carpenters District Council*, 267 NLRB 1223, 1226 (1983); *Plumbers Local Union No. 17*, 224 NLRB 1262, 1263 (1976), *enfd.* 575 F.2d 585 (6th Cir. 1978). Cf. *Ironworkers, Local 10*, 196 NLRB 712 fn. 3 (1972). Krause's unrefuted testimony was that he consistently went to Friend to request sheet metal workers for the project, and Friend consistently supplied him with the necessary employees, if they were available.

The Respondent focuses on Khoury, Arnold and Foster. As stated, Krause routed all three through Vermilion District's referral system. Khoury ended up not accepting the referral, and Arnold was referred out because Local 33 had no other welders available with the necessary certifications. Out of the hundreds of referrals over the 2.5 years, there appear to be few exceptions. These limited exceptions are insufficient to negate the overwhelming evidence establishing Giffin's consistent practice of exclusively going through the referral system when it needed additional sheet metal workers for the Ford project.

Based on the foregoing, I conclude the General Counsel has established that the Respondent operated an exclusive referral system, which imposed upon it a duty not to threaten to discriminate against employees in the operation of the referral system based on their (non)membership status. As such, I conclude the Respondent, through business representative Pat Allen, violated that duty and Section 8(b)(1)(A) of the Act when he sent the October 8, 2024 text message to Bartelt stating nonmembers would not be referred out to projects.

CONCLUSIONS OF LAW

1. Tri-State Roofing and Sheet Metal of Ohio is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 33 Parkersburg District (the Respondent) is a labor organization within the meaning of Section 2(5) of the Act.

3. Tri-State Roofing and Sheet Metal of Ohio and the Respondent are and have been at all material times parties to a collective-bargaining agreement that provides for an exclusive referral system.

4. The Respondent violated Section 8(b)(1)(A) of the Act on or about October 8, 2024, when its business representative Pat Allen, by text message, threatened employees that it would not refer nonmembers out for jobs through its exclusive referral system.

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

REMEDY

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

10 The Respondent shall notify Ryan Bartelt in writing that it will not discriminate against him or any other employees based on their membership status when making referrals. The Respondent also shall post an appropriate informational notice, as described in the attached Appendix. This notice, on a form provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days
15 in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the
20 Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former members at any time since October 8, 2024.

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁵

ORDER

30 The Respondent, the International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 33 Parkersburg District, its officers, agents, and representatives shall

1. Cease and desist from

35 a. Threatening to not refer nonmembers out for jobs through its exclusive referral system.

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

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

a. Within 14 days after service by the Region, notify Ryan Bartelt, in writing, that it will not threaten to discriminate against him or any other employees based on their membership status when making referrals.

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

5 b. Within 14 days after service by the Region, the post at its Parkersburg, West Virginia office
copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by
the Regional Director for Region 6, after being signed by the Respondent's authorized
representative, shall be posted by the Respondent and maintained for 60 consecutive days in
conspicuous places, including all places where notices to members and nonmembers are
customarily posted. In addition to physical posting of paper notices, 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 and nonmembers by
such means. Reasonable steps shall be taken by the Respondent to ensure that the Notices are
10 not altered, defaced, or covered by any other material.

15 c. Within 14 days after service by the Region, deliver to the Regional Director for Region 6
signed copies of the notice in sufficient number for posting by the Employer at its Parkersburg,
West Virginia facility, if it wishes, in all places where notices to members and nonmembers are
customarily posted.

20 d. Within 21 days after service by the Region, file with the Regional Director for Region 6 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. August 25, 2026

A handwritten signature in black ink, reading "Andrew S. Gollin". The signature is written in a cursive, flowing style. The first name "Andrew" is written in a larger, more prominent script, followed by "S." and "Gollin". The signature is contained within a rectangular box.

25 Andrew S. Gollin
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT threaten employees that we will not refer nonmembers out for jobs through our exclusive referral system.

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

WE WILL notify Ryan Bartelt, in writing, that we will not threaten to discriminate against him or any other employees based on their membership status when making referrals.

**INTERNATIONAL ASSOCIATION OF SHEET
 METAL, AIR, RAIL AND TRANSPORTATION
 WORKERS LOCAL UNION NO. 33 PARKERSBURG
 DISTRICT (TRI-STATE ROOFING & SHEET METAL
 OF OHIO)**

(Employer)

Dated: _____ By: _____
(Representative) (Title)

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

William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 916
 Pittsburgh, PA 15222-4111
 (412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/06-CB-354820 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (412) 690-7117.