

From: [Shorter, LaDonna](#)
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Subject: Sprinklermatic Florida, LLC, Case 12-CA-340152 (case-closing email)
Date: Thursday, August 20, 2026 9:04:51 AM

From: (b) (6), (b) (7)(C)

Sent: Monday, August 17, 2026 1:52 PM

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The Region submitted this case for advice on whether the Employer violated Section 8(a)(1) and (3) by refusing to hire or consider for hire eight paid Union organizers. We conclude that it would be difficult to prove a violation as to seven of the Applicants. As to the remaining applicant, we conclude that (b) (6), (b) (7)(C) résumé demonstrates that (b) (6), (b) (7)(C) had no genuine interest in employment under *Toering Electric Co.*, 351 NLRB 225 (2007), and Memorandum GC 25-08, *Guidance for Investigating Salting Cases* (July 24, 2025). Therefore, the Region should dismiss the charge, absent withdrawal.

Briefly, on (b) (6), (b) (7)(C) 2023, eight paid Union organizers (collectively, Applicants) applied as overt salts for positions at various Employer facilities across Florida. The Applicants applied through the Employer's website and received the same automated email acknowledging their submissions, and several followed up by phone. None of these Applicants was referred by a supervisor, manager, or employee then working for the Employer. Two Applicants, (b) (6), (b) (7)(C), had previously worked for the Employer during a covert salting campaign in (b) (6), (b) (7)(C) (Allegations stemming from that prior campaign, including the discharge of two paid organizers, were settled and the case was closed on compliance in (b) (6), (b) (7)(C) 2023. The Employer also settled allegations that, on (b) (6), (b) (7)(C) 2023, it directed employees not to talk to Union agents and ordered the agents off public property.) (b) (6), (b) (7)(C) but not (b) (6), (b) (7)(C) followed up on (b) (6), (b) (7)(C) application with a local office manager with whom (b) (6), (b) (7)(C) had worked previously and was effectively told that the central human resources office was handling the hiring.

The Employer submitted hiring data supporting its assertion that, during the relevant period, it exclusively hired individuals who had been referred by individuals in its workforce. The Employer maintains a written hiring policy that gives highest hiring preference to current and former employees, followed by qualified individuals referred by supervisors, managers, or

employees. Under the Employer's policy, individuals who have applicable work experience but lack a referral are a lower priority. The Employer does not require any candidate who is referred for employment to submit an application, and it contends that the purpose of the online application is to generate a pool of applicants in the event it does not have enough referrals for available positions—a situation that never arose during the relevant period.

We conclude that the Employer can likely establish it would not have hired or considered seven of the Applicants because it hired exclusively through referrals. Under *FES*, if the General Counsel makes a prima facie showing that antiunion animus contributed to a decision not to hire or consider for employment, the burden shifts to the employer to show it would have taken the same employment action even in the absence of the applicant's union activity or affiliation. 331 NLRB 9, 12, 15 (2000), *supplemented*, 333 NLRB 66 (2001), *enforced*, 301 F.3d 83 (3d Cir. 2002).

As a threshold issue, it would be difficult to prove that the Employer even reviewed the online applications, which would be fatal to the case as to seven of the eight Applicants, including (b) (6), (b) (7)(C). See *B & C Contracting Co.*, 334 NLRB 218, 219, 231 (2001) (no unlawful refusal-to-consider where faxed applications were received by employer's fax machine, but decisionmaker neither received them nor knew of them). The evidence tends to support the Employer's assertion that its hiring needs were satisfied exclusively through internal referrals, which lends credence to its defense that it had no need to, and did not, access or review any of the approximately 270 online applications it received in (b) (6), (b) (7)(C) 2023.

Although several Applicants followed up on their applications by phone, the Employer's responses did not convey that their online applications would necessarily be reviewed.

Moreover, six Applicants had a lower hiring priority than the referred individuals who were, in fact, hired. It is well established that an employer does not violate the Act where its decision is made in accordance with its nondiscriminatory hiring policy. *E.g.*, *Brandt Construction Co.*, 336 NLRB 733, 733-34 (2001) (no violation where employer followed established hiring policy that gave preference to current employees, past employees, and applicants recommended by supervisors or employees), *review denied sub nom. Operating Engineers Local 150 v. NLRB*, 325 F. 3d 818 (7th Cir. 2003). Accordingly, it would be difficult to prevail on the merits as to seven Applicants for at least one of these reasons. These defenses are unavailing as to (b) (6), (b) (7)(C), however, because (b) (6) had higher priority as a past employee and (b) (6) followed up on (b) (6), (b) (7)(C) application with an office manager who would have immediately recognized (b) (6), (b) (7)(C) as such. Even assuming the Employer deviated from its hiring policy in this one instance, this would not invalidate its otherwise consistent application with respect to the other Applicants.

Tradesmen International, Inc., 351 NLRB 399, 400 & n.5 (2007) (finding that single exception to employer's otherwise consistently applied policy did not render the policy invalid and relying on that policy to dismiss allegations of hiring discrimination).

As to (b) (6), (b) (7)(C), we likewise find that dismissal is appropriate but due to a lack of genuine interest under *Toering*. (b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Accordingly, the Region should dismiss the charge, absent withdrawal. Please contact us with any questions or concerns.

Best regards,

(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

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