

1 Facebook. The notice had been sent to the Doe's email address, which contains the Doe's name. A copy
2 of that email, with the identifying email address redacted, is attached as Exhibit A.

3 4. The notification from Facebook included a copy of the subpoena from plaintiff Jones. A copy
4 of the subpoena is attached as Exhibit B.

5 5. The email address to which the notice was sent was the same email address that the Doe was
6 using to communicate with me, which confirmed that my client is, in fact, the Doe who created the Facebook
7 page at issue in the case.

8 6. To further confirm my client's identity, I asked her to send me a copy of her union card. She sent
9 me a card that identified her as a member of a local union of the Boilermakers. A copy of the card, with my
10 client's name, identifying number, and local union number redacted, is attached as Exhibit C.

11 7. Through a contact in Kansas City, I obtained a copy of the complaint from the state court for
12 Wyandotte County, Kansas. The entire complaint that he provided to me is attached as Exhibit D. My
13 contact indicated that there were no attachments to the complaint in the state court file.

14 8. On May 13, 2012, a Kansas City newspaper ran a story about the leadership of the International
15 Brotherhood of Boilermakers. A copy of the story is attached as Exhibit E. The story identifies Michael
16 Stapp, the senior attorney for plaintiff in this case, as the union's general counsel.

17 9. I asked counsel for plaintiff to send me a copy of the Facebook page over which their client had
18 sued. I received the three pages attached as Exhibit F.

19 10. From my long experience representing union members and rank-and-file organizations in union
20 democracy cases, as well as service since about 1983 on the Board of Directors of the Association for Union
21 Democracy, I have become aware that many members of unions in the construction trades are afraid to be
22 publicly identified as opponents of the union leadership. This fear is not limited to construction unions, but
23 it is accentuated in those unions and some other unions where, as in the construction trades, workers
24 commonly obtain work through hiring halls that are operated by the union leadership. Such hiring halls have
25 referral rules that are supposed to avoid discrimination or retaliation, but, in my experience, members
26 working out of hiring halls commonly believe that business agents have various ways to favor their friends
27 and hurt their enemies despite the rules. I attach as Exhibit G a booklet published by the Association for
28 Union Democracy entitled *Union Democracy in the Construction Trades*, which discusses these problems,

1 as well as a pair of articles from the Association's publication, *Union Democracy Review* (Exhibit H).

2 11. The very real fear of economic consequences from being identified with intra-union opposition
3 played a significant issue in a case I handled involving a rule adopted by the International Union of
4 Operating Engineers, requiring candidates with web sites relating to their campaigns for local union office
5 to "password protect" their sites so that only union members could gain access. *Quigley v. Giblin*, 569 F.3d
6 449 (D.C. Cir. 2009). Many members expressed concern about the prospect that information identifying
7 them as visiting the web sites of disfavored candidates might be revealed to the union leadership. During
8 the case, a former local union business agent revealed various ways in which a union official running a
9 hiring hall could exercise discretion to favor some members and disfavor others. An excerpt from his
10 affidavit is attached as Exhibit I. During a deposition of that union's information technology director about
11 the union's plans for running a remotely-operated password identification and authentication system, the
12 official acknowledged the importance of reassuring members that the identities of those visiting web sites
13 would not be retained, to meet the concern on the part of members of having their visits to certain web sites
14 tracked by the union. I attach an excerpt from the deposition transcript as Exhibit J.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
16 and correct. Executed this 23rd day of May 2012, in Washington, D.C.

17
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19 Paul Alan Levy
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From: [REDACTED]@perkinscoie.com
To: [REDACTED]
Date: Mon, 7 May 2012 09:29:33 -0700
Subject: Legal Notice from Facebook
Dear Facebook User:

We represent Facebook, which received the attached subpoena seeking information associated with your account.

Facebook is providing you this notice and will wait for 21 days before taking any action with respect to the subpoena. If you do not provide me with a copy of a filed motion objecting to the subpoena within 21 days, Facebook may process the subpoena and disclose information to the extent permitted or required by law. Facebook processes non-governmental subpoenas to the extent permitted or required by the federal Stored Communications Act, 18 U.S.C. ss 2701, et seq., and any other applicable federal or state laws. Neither Facebook nor I can provide you with legal advice. If you have questions about the subpoena, you should consult an attorney.

If you or your attorney wish to contest or object to the subpoena, you should contact the attorney listed on the subpoena or the issuing court. Please send me a copy of any objections or pleadings you file. Again, if you do not provide me with a copy of a filed motion objecting to the subpoena within 21 days, Facebook may process this subpoena and disclose information in response.

If you do not object to the release of the information or records identified in the subpoena and instead wish to affirmatively authorize the release of the information identified in the subpoena in response to the subpoena, please respond directly to me or have your attorney contact me.

Regards,

Ryan

Ryan Spear |Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
PHONE: [REDACTED]
FAX: [REDACTED]
E-MAIL: [REDACTED]@perkinscoie.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

* * * * *

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Levy Affidavit
Exhibit A

SUBP-035

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Michael J. Stapp (KS 11735) 753 State Ave., Ste. 475 Kansas City, KS 66101 TELEPHONE NO: 913-321-8884 FAX NO: 913-321-2396 E-MAIL ADDRESS: mjs@blake-uhlig.com / jrm@blake-uhlig.com ATTORNEY FOR (Name): Newton B. Jones	FOR COURT USE ONLY
Court for county in which discovery is to be conducted: Sacramento SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY, STATE, AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME:	
Court in which action is pending: District Court of Wyandotte County, Kansas Name of Court: District Court of Wyandotte County, Kansas STREET ADDRESS: 710 N. 7th St. MAILING ADDRESS: CITY, STATE, AND ZIP CODE: Kansas City, KS 66101 COUNTRY: USA	
PLAINTIFF/PETITIONER: Newton B. Jones DEFENDANT/RESPONDENT: John Does #s 1-3	CALIFORNIA CASE NUMBER (if any assigned by court): 34-2012-0062374
SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (if action pending outside California): 12CV535

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Cust. of Recs., Facebook, Inc., c/o CSC, 2730 Gateway Oaks Dr., Ste. 100, Sacramento, CA 95833

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in Item 3, as follows:

To (name of deposition officer): **Robert Schabert**

On (date): **May 7th, 2012**

At (time): **9:00 AM PST**

Location (address): **1414 Merkley Ave., Ste. 2, W Sac., CA 95691**

Do not release the requested records to the deposition officer prior to the date and time stated above.

- ☒ by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - ☐ by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - ☐ by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records must be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):
See Attachment 3 (Attachment A on Kansas-issued Subpoena)

☒ Continued on Attachment 3 (use form MC-025).

4. Attorneys of record in this action or parties without attorneys are (name, address, telephone number, and name of party represented):
Michael J. Stapp (KS 11735), 753 State Ave., Ste. 475, Kansas City, KS 66101, (913) 321-8884, representing Newton B. Jones (Plaintiff).

☐ Continued on Attachment 4 (use form MC-025).

Page 1 of 2

Levy Affidavit
Exhibit B

SUBP-035

PLAINTIFF/PETITIONER: Newton B. Jones	CASE NUMBER (if action pending outside California)
DEFENDANT/RESPONDENT: John Does #s 1-3	

5. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedure section 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.

6. ☒ Other terms or provisions from out-of-state subpoena, if any (specify):

Original Subpoena with case-specific Affidavit of Custodian of Business Records is also attached for use by Custodian of Records.

☐ Continued on Attachment 6 (use form MC-025).

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date Issued: 4/13/2012

(TYPE OR PRINT NAME)

E. MUNIZ

(SIGNATURE OF DEPUTY CLERK SERVING SUBPOENA)

DEPUTY CLERK

(TITLE)

**PROOF OF SERVICE OF SUBPOENA FOR
PRODUCTION OF BUSINESS RECORDS**

1. I served this Subpoena for Production of Business Records in Action Pending Outside California by personally delivering a copy to the person served as follows:

- a. Person served (name):
b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1) ☐ were paid. Amount: \$ _____

(2) ☐ were not paid.

(3) ☐ were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. ☐ I also served a completed Proof of Service of Notice to Consumer or Employee and Objection (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

- a. ☐ Not a registered California process server
b. ☐ California sheriff or marshal
c. ☐ Registered California process server
d. ☐ Employee or independent contractor of a registered California process server
e. ☐ Exempt from registration under Business and Professions Code section 22350(b)
f. ☐ Registered professional photocopier
g. ☐ Exempt from registration under Business and Professions Code section 22451
h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

DEPARTMENT

53

FILED

SUBP-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address).

Michael J. Stapp (KS 11735)

753 State Ave., Ste. 475

Kansas City, KS 66101

TELEPHONE NO 913-321-8884

FAX NO (Optional) 913-321-2396

E-MAIL ADDRESS (Optional) mjs@blake-uhlig.com / jrm@blake-uhlig.com

ATTORNEY FOR (Name) Newton B. Jones

Superior Court of California,

Sacramento

04/13/2012

e-muniz

By _____, Deputy

Case Number:

34-2012-00122374

Court for county in which discovery is to be conducted: Sacramento

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento

STREET ADDRESS 720 9th Street

MAILING ADDRESS

CITY AND ZIP CODE Sacramento, CA 95814

BRANCH NAME

Court in which action is pending: District Court of Wyandotte County, Kansas

Name of Court: District Court of Wyandotte County, Kansas

STREET ADDRESS 710 N. 7th St.

MAILING ADDRESS

CITY, STATE, AND ZIP CODE Kansas City, KS 66101

COUNTRY USA

PLAINTIFF/PETITIONER: Newton B. Jones

DEFENDANT/RESPONDENT: John Does #s 1-3

CALIFORNIA CASE NUMBER (if any assigned by court)

34-2012-00122374

CASE NUMBER (of action pending outside California)

12CV535

APPLICATION FOR DISCOVERY SUBPOENA
IN ACTION PENDING OUTSIDE CALIFORNIA

1. Applicant (name): Newton B. Jones

is (check one):

☒ Plaintiff ☐ Petitioner ☐ Defendant ☐ Respondent ☐ Other (specify):

in the above action:

2. Applicant requests that this court issue a subpoena for discovery under Code of Civil Procedure sections 2029.100 - 2029.900 to (name and address of deponent or person in control of property):

Custodian of Records, Facebook, Inc., c/o Corporation Services Company, 2730 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833

3. Attached is (check one): ☐ the original ☒ a true and correct copy of the document from the court in which the action is pending that requires the person in 2 to (check all that apply):a. ☐ attend and give testimony at a deposition;b. ☒ produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent;c. ☐ permit the inspection of premises under the control of the deponent.

4. Applicant submits with this application a proposed subpoena that includes terms identical to those in the document from the out-of-state court. (Code of Civil Procedure section 2029.300(d).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4/13/2012

Michael J. Stapp

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Note: This application must be accompanied by the fee specified in Government Code section 70626. A discovery subpoena must be personally served on the deponent in compliance with California law, including Code of Civil Procedure section 1985.

Fax File

MC-025

SHORT TITLE:

Attachment to Form subp035

CASE NUMBER

ATTACHMENT (Number): 3

(This Attachment may be used with any Judicial Council form.)

As used herein, the phrase "Subject Page" refers to the following Facebook Page:
<http://www.facebook.com/pages/Lord-Newton-B-Jones/249068721834678>.

1. Account registration data related to Subject Page, including the registering email address.
2. A copy of data posted to the Subject Page.

Note: please produce a copy of data as permitted by Facebook's Impostor Account Information Requests (<http://www.facebook.com/help/?page=203531136349968>)

3. An IP Log for IP addresses associated with the Subject Page account.
4. Any notice, correspondence, or message from Facebook to the Subject Page account regarding removal of the Subject Page.

Note: The Subject Page was removed by Facebook on March, 28, 2012.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page _____ of _____

(Add pages as required)

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

NEWTON B. JONES,

Plaintiff,

v.

JOHN DOE #1,
JOHN DOE #2, and
JOHN DOE #3,
(Do not serve)

Defendants.

Case No. 12CV535Div. No: 7

Chapter 60

SUBPOENA OF BUSINESS RECORDS

TO: Custodian of Records, Facebook, Inc.
c/o Corporation Services Company
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

You are commanded to produce the records listed below before the attorney of record on the 7th day of May, 2012 at 9:00 a.m. and to testify on behalf of the above named parties. Failure to comply with this subpoena may be deemed a contempt of the court.

Records to be produced: See Attachment A

You may make written objection to the production of any or all of the records listed above by serving such written objection upon Michael J. Stapp attorney, at 753 State Ave., Ste. 475, Kansas City, KS 66101 within 14 days after service of this subpoena, on or before April 30, 2012. If such objection is made, the records need not be produced except upon order of the court. (KSA 60-245)

Instead of appearing at the time and place listed above, it is sufficient compliance with this subpoena if a custodian of the business records delivers to the requesting party by mail or otherwise a true and correct copy of all the records described above and mails a copy of the affidavit below to Michael J. Stapp at 753 State Ave., Ste. 475, Kansas City, KS 66101 within 14 days after the receipt of this subpoena.

The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of this subpoena are clearly inscribed. The affidavit needs to be attached to the outside of the package. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the attorney of record.

The records described in this subpoena shall be accompanied by the affidavit of a custodian of the records, a form for which is attached to this subpoena.

If the business has none of the records described in this subpoena, or only part thereof, the affidavit shall so state, and the custodian shall send only those records of which the custodian has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

The reasonable costs of copying the records may be demanded of the party causing this subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

The copy of the records will not be returned unless requested by the witness.

KATHLEEN M. COLLINS

DATED: 4/12/12BY: [Signature]

(seal)

Fax File

ATTACHMENT A

As used herein, the phrase "Subject Page" refers to the following Facebook Page:
<http://www.facebook.com/pages/Lord-Newton-B-Jones/249068721834678>.

1. Account registration data related to Subject Page, including the registering email address.
2. A copy of data posted to the Subject Page.

Note: please produce a copy of data as permitted by Facebook's Impostor Account Information Requests
(<http://www.facebook.com/help/?page=203531136349968>)

3. An IP Log for IP addresses associated with the Subject Page account.
4. Any notice, correspondence, or message from Facebook to the Subject Page account regarding removal of the Subject Page.

Note: The Subject Page was removed by Facebook on March, 28, 2012.

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

NEWTON B. JONES,

Plaintiff,

v.

JOHN DOE #1,
JOHN DOE #2, and
JOHN DOE #3,
(Do not serve)

Defendants.

Case No. _____

Div. No: _____

Chapter 60

AFFIDAVIT OF CUSTODIAN OF BUSINESS RECORDS

I, _____, being first duly sworn, on oath, depose and say that: I am a duly authorized custodian of the business records of _____ and have the authority to certify those records.

The copy of the records attached to this affidavit is a true copy of the records described in the subpoena.

The records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

(Signature of Custodian)

Subscribed and sworn to before the undersigned on the _____ day of _____,

My appointment Expires: _____

(Notary Public)

CERTIFICATE OF MAILING

I hereby certify that on _____, I mailed a copy of the above affidavit to _____ at _____ by depositing it with the United States Postal Service for delivery with postage prepaid.

(Signature of Custodian)

Subscribed and sworn to before the undersigned on _____,

My Appointment Expires; _____

(Notary Public)

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
IRON SHIP BUILDERS, BLACKSMITHS,
FORGERS & HELPERS, AFL-CIO, CLC

2012 - 2016 MEMBERSHIP CARD

[REDACTED]

LODGE

REG. NO.

ENROLLED

[REDACTED]

SUBJECT TO VERIFICATION OF GOOD STANDING IN ACCORDANCE WITH
ARTICLE 29 OF THE CONSTITUTION (SEE REVERSE SIDE)

Newton B. Jones

NEWTON B. JONES
INTERNATIONAL PRESIDENT

William T. Creeden

WILLIAM T. CREEDEN
INT'L SECRETARY-TREASURER

FILED
2012 APR 12 PM 4:12
CLERK DISTRICT COURT
WYANDOTTE COUNTY KANSAS
BY *[Signature]* DEPUTY

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

NEWTON B. JONES,

Plaintiff,

v.

JOHN DOE #1,
JOHN DOE #2, and
JOHN DOE #3,
(Do not serve)

Defendants.

Case No. 12CV535
Div. No: 2
Chapter 60

PETITION

(Pursuant To K.S.A. Chapter 60)

COMES NOW Plaintiff Newton B. Jones, by and through undersigned counsel, and for his cause of action against Defendants John Does #1, #2, and #3, hereby alleges and states as follows:

1. Plaintiff, Newton B. Jones, is an adult male citizen of the United States whose residential address is in Chapel Hill, North Carolina. Plaintiff is the International President of the International Brotherhood of Boilermakers, [et al.] ("IBB"), and maintains an office in Kansas City, Kansas for the purpose of conducting business in that capacity.

2. Defendants are individuals who committed one or more intentional torts against Plaintiff, and whose identities are not known to Plaintiff at this time. They are the individuals who were personally involved, directly or indirectly, in the matters referred to hereinafter in this Petition.

3. In approximately February 2012, a Facebook Page was created that purported to be the Facebook Page of Plaintiff.

4. The subject Facebook Page was not created by or otherwise approved or sanctioned by Plaintiff. It was, in fact, an impostor Facebook Page.

5. Upon information and belief, the impostor Facebook Page was created by Defendants.

6. Upon information and belief, Defendants posted false and/or defamatory content on the impostor Facebook Page.

7. Upon information and belief, Defendants posted unauthorized content on the impostor Facebook Page.

8. Upon information and belief, Defendants communicated with other Facebook users through the subject Facebook Page and Facebook's features including, but not limited to, messages, comments, requests, posts, and chat.

9. By creating the subject Facebook Page, posting content thereon, and making communications through the subject Facebook Page, Defendants have co-opted and pirated Plaintiff's identity and impersonated him with the intent to defraud.

10. By creating the subject Facebook Page, posting content thereon, and making communications through the subject Facebook Page, Defendants misrepresented that they were Plaintiff. Defendants intentionally made these misrepresentations for the purpose of inducing

viewers of the subject Facebook Page and users of Facebook to rely or act on such misrepresentations.

11. Based upon the foregoing, Plaintiff alleges that Defendants caused injury to Plaintiff's reputation in the community.

12. Based upon the foregoing, Plaintiff alleges that Defendants have committed fraud by holding themselves out as the real Newton B. Jones.

13. Defendants' actions were intended to embarrass and humiliate Plaintiff.

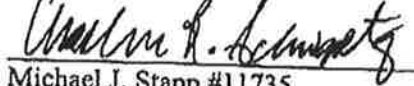
14. Defendants' conduct, as described above, is extreme and outrageous. This conduct has intentionally or recklessly caused injury to Plaintiff, for which Defendants are now liable.

WHEREFORE, as a direct and proximate result of Defendants' conduct, Plaintiff has suffered injury. Accordingly, Plaintiff prays for relief in the form of a judgment against Defendants, and that the court award damages in an as yet unspecified amount for distress and injury to his reputation. Plaintiff further requests that the court enjoin Defendants from engaging in such conduct in the future. Plaintiff further requests attorneys' fees, costs, and such other relief as justice may require under the circumstances.

Dated this 12 day of April, 2012.

Respectfully submitted,

BLAKE & UHLIG, PA



Michael J. Stapp #11735

Charles R. Schwartz #14232

475 New Brotherhood Building

753 State Avenue

Kansas City, KS 66101

(913) 321-8884

(913) 321-2396 - Fax

Attorneys for Plaintiff



KansasCity.com

THE KANSAS CITY STAR.

[Back to web version](#)

Wednesday, May 23, 2012

Posted on Sun, May. 13, 2012

Boilermakers union leaders receive lofty pay, benefits

By JUDY L. THOMAS
The Kansas City Star

A prime suite at Kansas Speedway. First-class travel. Six-figure salaries for half the staffers. Plenty of plum jobs for family members.

Life is good at the top of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.

The union, with its headquarters in Kansas City, Kan., represents about 59,000 workers in the U.S. and Canada who make and repair boilers, fit pipes and work on ships and power plants. The recession has hit their trade hard, reducing union membership.

At the same time, the president's salary has surged 67 percent in the past six years, not counting a recent raise. Add in travel and some other expenses, and Newton B. Jones totaled more than \$600,000 last year, putting him at the absolute top of the presidents of the dozen biggest unions in the country.

The Boilermakers value families — of officers, certainly. Many relatives ride the payroll.

The union defends executive salaries and hiring of relatives. But totaling the pay to just the families of Jones and two other executives, the union and its affiliates paid them more than \$2 million in annual salary, according to the most recent financial reports filed by the organizations.

Those findings are part of a wide-ranging examination of the Boilermakers over the past year by The Kansas City Star, which reviewed thousands of pages of labor union reports and tax documents.

Pay isn't the only reason to aspire to an office at headquarters, the newspaper found:

- While few other unions still own planes, the Boilermakers partially own two, paying a half million dollars last year for maintenance and fees. When they travel on commercial flights, officers can go first-class.
- Once they arrive, officers may enjoy memorable experiences — exclusive pheasant hunting expeditions, fly-fishing adventures in Alaska, stays in Paris and on Marco Island, Fla.
- Some officers can supplement their union salaries with pay from the union's own bank. At least two have made as much as an additional quarter million dollars a year.
- And once their careers are over, retiring officers drive away in gift cars.

"This is one of the more egregious examples of money flowing like crazy that I've ever seen," said Nathan Mehrens, a former U.S. Labor Department lawyer and now general counsel for Americans for Limited Government, a conservative watchdog group.

"It's really remarkable, and I say that having spent 10 years looking at these issues."

As a nonprofit, the union and its key employees are prohibited under federal tax law from improperly benefiting from their organization.

In an interview, two union spokesmen defended the spending and hiring practices before requesting other questions in writing. Although they did not respond to every specific question, Michael Stapp, the union's general counsel, provided a written response that included praise for the Boilermakers.

"The Boilermaker family of organizations, together valued at over \$10 billion, has proudly represented the interests of hundreds of thousands of working men and women for over 130 years," Stapp wrote.

Levy Affidavit
Exhibit E

"The history of the International Brotherhood of Boilermakers clearly demonstrates that they operate in strict accordance with all applicable laws and governing documents. They operate in much the same manner as most other labor organizations. And the impact of the Boilermaker contribution to North American society since the development of the steam engine is nothing short of remarkable."

In the interview, James Pressley, one of the union's seven international vice presidents, said the union is cutting expenses.

"Some of that has been scaled back because of the economy," he said.

Attempts to reach rank-and-file union members for comment were unsuccessful. But rumbles of discontent are sometimes felt.

A recent Facebook page created apparently by an East Coast boilermaker was entitled "Lord Newton B. Jones" and criticized Jones' salary and family ties. The page was taken down in April.

Also last month, an anonymous letter, mailed purportedly by Boilermakers members and obtained by The Star, sharply criticized union leaders.

"While members and their families struggle to make it through this recession, our IBB (International Brotherhood of Boilermakers) leaders have been living high off the hog at members' expense," the letter said.

"We regret that we have to be anonymous at this time because we fear retribution from a leadership that regrettably values its own personal and financial interests above the rank and file's."

Lofty salaries

In membership, the Boilermakers are a mere 5 percent the size of the Teamsters union. Yet which president received more in total disbursements from their unions last year — Teamsters President James P. Hoffa or the lesser-known Newton B. Jones?

Jones by more than \$200,000.

Jones received \$607,022 in total disbursements, compared with \$372,489 for Hoffa.

Total disbursements include salary and business expenses, especially travel, which a union spokesman said made up most of Jones' expenses. The figures should not include benefits, a U.S. Department of Labor spokesman said.

Jones' salary in the last fiscal year, which ended June 30, 2011, was \$307,134 — also more than Hoffa. The figures come from annual reports the unions file with the Labor Department.

Jones' total disbursements also are more than double those of Richard Trumka, head of the powerful AFL-CIO, a federation of national and international unions with 11.6 million members. Trumka received total disbursements of \$293,750.

Assuming that most of Jones' expenses are travel-related, as the union says, those figures are far beyond the travel costs of other union presidents, said J. Justin Wilson, managing director of the Center for Union Facts, a watchdog group that's critical of labor unions.

"I just don't understand how he can spend that much on travel," Wilson said. "You just don't see that in labor union leaders."

Jones' disbursements also dwarf those of presidents of two similar-sized unions, the International Federation of Professional and Technical Engineers with 68,526 members and the 54,122-member Brotherhood of Locomotive Engineers and Trainmen.

Total disbursements to the Boilermakers' other eight international officers range from \$340,387 to \$494,298. And 71 of the union headquarters' other 123 employees have six-figure total disbursements ranging from \$109,192 to \$352,107.

All together, the total disbursements last year to the top nine Boilermakers officers — \$4.1 million — were \$182,000 more than the total disbursements to the 29 executives at the national headquarters of the Teamsters union.

Although the Boilermakers' general counsel did not compare total disbursements, he did say that Jones' salary

is not out of line.

Jones' "salary falls somewhere in the middle of comparable union presidents and extraordinarily less than a comparatively valued corporation whose typical compensation packages are in the multi-millions of dollars," Stapp wrote.

Indeed, in salary only, some presidents in one union alliance that includes the Boilermakers earn more than Jones.

As for Jones' expenses, Stapp said the union's travel policy is in strict accordance with its constitution and is approved by union delegates.

Jones "spends the majority of his time traveling to represent the various interests of the Boilermakers' family of organizations and the members they serve. With the advent of modern electronic communication capabilities, all officers and staff are freed from the limitation of office landline telephone communication allowing for increased mobility and personal representation of our members."

Like most of the Boilermakers' top officials, Jones doesn't live near the headquarters in the Kansas City area. He resides in North Carolina.

One labor expert who is familiar with the Boilermakers said union leaders work very hard for their salaries and need to travel.

"Top union officers, they work," said Judy Ancel, director of The Institute for Labor Studies at the University of Missouri-Kansas City. "And to do that, they have to travel. They're traveling all over the country."

Ancel noted that times have changed for union headquarters.

"As a general rule, union staff, including officers, are working harder than they ever have," she said. "Because of the decline of membership, unions have also downsized, which means that their staff still has to represent the members, still has to negotiate the contracts, handle the grievances, administer the unions."

Spirited debate

Indeed, Boilermaker leaders acknowledged last year at a convention in Las Vegas that the union faces a struggling economy.

International Secretary-Treasurer William Creeden told the conference that the union continued to face challenges because of plant closures, off-shoring and the recession. Another major concern, he said, was that membership had declined 7.6 percent since 2006.

"Membership loss not only reduces our strength, bargaining power, and political power, but also greatly affects our revenue over time," he said, according to a union report of the meeting.

Convention delegates were so concerned about making ends meet that a debate broke out over a plan to assess a \$1-a-month fee for a new division. Some said the monthly fee would create financial hardships for members.

Yet the conference voted Jones and the other officers a pay raise — although not without debate.

The nine officers ran unopposed for re-election on a slate called the Proven Leadership Team.

"We are fortunate to have candidates of such high caliber," said the delegate who nominated them.

Then came the proposal for raising their pay.

"Some delegates were against giving the (International president) a raise at a time when many Boilermakers are having trouble negotiating raises because of the recession," said an article in The Boilermaker Reporter, an in-house publication. Others argued, however, that Jones not only deserved a raise but needed one to bring his salary more in line with salaries of other presidents of unions in the Building and Construction Trades Department of the AFL-CIO.

That wasn't necessarily true. An examination of leaders' salaries in the Building and Construction Trades Department — an alliance of 13 skilled-trade unions including the Boilermakers — shows Jones was smack in the middle last year. And when it comes to the total disbursements received from their unions, Jones is the highest. (See the graphic on page A15.)

The Boilermaker Reporter called the debate over Jones' salary increase "spirited but cordial."

Delegates agreed to give Jones a raise but to make it smaller.

So how much will his pay be going up? The union did not respond, but the union's constitution approved last summer sets his new salary at \$6,538 per week, or almost \$340,000, with 5 percent increases in following years.

Stapp said delegates overwhelmingly voted to adjust the salaries of Jones and other officers.

"President Jones was recently unanimously re-elected by approximately 600 delegates in an open democratic election process, clearly demonstrating membership support for him," Stapp said.

Stapp added that union leadership has reduced annual expenses by more than \$10 million over the past nine years, including the elimination of three officers. Shortly after the 2011 convention, Jones and other officers made an additional \$3 million in cuts, with more being considered, he said.

But the compensation and perks in the Boilermakers headquarters stunned Marcus Owens, a Washington, D.C., attorney who once headed the division of the IRS that oversees nonprofit organizations.

"Those kinds of benefits seem extraordinarily high," Owens said. "That's just over the top."

At the same time, when it comes to representing its members in collective bargaining and enforcement of contracts, the Boilermakers appear to spend a smaller portion than some other unions.

Last year, the union spent \$9.7 million, or 14 percent of its total expenditures, on negotiations and enforcement, according to its annual report. In comparison, the Teamsters spent 29.5 percent, the United Auto Workers spent 40.9 percent and the Machinists 28.9 percent.

Boilermaker members pay dues to the international headquarters of \$23.15 a month.

Taxpayers, too, have a stake in the Boilermakers' spending.

The union, like most, is structured as a nonprofit organization, which means it qualifies for exemption from federal income tax. But the law prohibits union officials or key employees from benefiting from the tax-free money they raise — something called "private inurement." The most common kind of private inurement is excessive compensation paid to insiders.

"I think there are real tax issues and probably Department of Labor issues as well," Owens said of the Boilermakers. "And the IRS would question whether the income is being used for the benefit of the union members or not."

An IRS spokesman said the agency could not comment, citing disclosure laws.

The Boilermakers' spending practices should raise concerns among all tax-paying citizens, Owens said.

"They're not paying income tax," he said. "So in a sense, we're all supporting them...I don't mind tax-exempts that are doing what they're supposed to do, but if they aren't, I'd kind of like them to pull on the oars, too."

Bankability

While their union pay may seem comfortable, some officers get a second hefty paycheck, thanks to a bank the union controls.

The union is principal shareholder of Brotherhood Bank & Trust, which has seven branches in the metro area. The main bank is at the union's headquarters.

Three of the bank's 11 board members are union officers, and one is a retired union officer.

The bank's chairman? Boilermakers President Newton Jones.

In calendar year 2010, Jones received \$52,945 as chairman of the bank's board of directors in addition to his union pay, according to the most recent report he filed with the Labor Department. The previous year, Jones received \$79,775 as bank chairman and \$260,000 as the bank's chief executive officer and interim president. In 2008, he received \$230,000 from the bank.

"Those both sound like full-time jobs," Owens said of Jones' union and bank positions in 2008 and 2009. "It's

certainly full-time compensation.”

Stapp said that Jones played a key role at the bank.

“Chairman Jones’s leadership contribution to this institution is evident in the board’s continuing demonstration of confidence in him, his vision and his labor business outreach initiative,” Stapp wrote.

Other union executives on the bank board received compensation as well.

Creeden, the union’s secretary-treasurer, reported receiving \$258,650 from the bank in 2009, the last year he filed. He also received \$252,098 in salary from the Boilermakers union in fiscal 2010.

(It’s difficult to calculate the total Creeden or other officers received in a single year because union pay is reported on a July-June fiscal year while bank pay is reported on a calendar year.)

Warren Fairley, an international vice president, received \$42,232 from the bank in calendar year 2010. His union salary was \$281,517 in fiscal 2010.

At a convention last summer, union delegates voted to require all “Boilermaker subordinate bodies” to bank with Brotherhood when possible — a measure that upset some union members.

Going-away gifts

Officers who retire from the Boilermakers union get more than a watch.

Each gets to keep his company car, and some become consultants for the union, with at least one continuing to earn six-figure pay.

For example, in 2010 the union “gifted” a vehicle to retiring international vice president Sammy May. The vehicle originally cost \$73,998 with a book value of \$51,388 when the union gave it to him, the union’s annual report said.

May wasn’t alone. According to its annual reports, the union has a long-standing policy of giving vehicles “as gifts to retiring officers.”

International vice president George Rogers retired in 2008, taking with him his company car that cost \$53,380. That same year, the union gave a vehicle that cost \$58,959 to the widow of an officer who had died.

Some retiring officers continue to receive union pay by working as consultants. Rogers made \$600,000 over two years, annual reports indicate.

Along with the \$300,000 in consulting fees he received in fiscal year 2008, the year he retired, Rogers earned \$400,871 in salary as a vice president, Department of Labor documents show.

In fiscal year 2009, records show Rogers received another \$300,000 in consulting fees.

Rogers said he couldn’t comment on pay.

“I’m not supposed to talk about anything,” Rogers said.

In 2007, the year he retired, vice president Joseph Stinger was paid \$263,910 in salary as international vice president plus \$56,406 in consulting fees. He continued to be paid as a consultant, with a total of about \$100,000 over 2010 and 2011.

“Those seem extraordinary,” Owens said of Rogers’ consulting fees. “Frankly, I’ve never seen consulting compensation to a retired officer at that level.”

Stinger declined comment and May could not be reached.

All in the family

Being a boilermaker executive can be a family business — especially if your last name is Jones.

Newton Jones and his family members alone make more than \$870,000 in salary, according to the most recent filings.

Jones, 58, himself comes from Boilermaker lineage.

He took over the president’s office when his father, Charles W. Jones, retired in 2003 after 20 years. The elder

Jones died in 2010.

Among Newton Jones' family members:

- His brother, Charles, is director of the Boilermakers' History Preservation Department and assistant to Newton. His salary in 2011 was \$150,091, with total disbursements of \$187,641.
- His sister, Donna, earns \$98,802 as an executive secretary.
- His relative, Michael Peterson, is an aide to Jones and until last year worked for the Boilermakers National Apprenticeship Program, earning \$132,746 in 2010, according to the program's most recent tax document, and \$127,252 from the union, according to its annual report for fiscal 2011. He told The Star he is now an international representative for the union as well as an aide to Jones.
- Jones' son, Cullen, is a video communications technician who lives in North Carolina, earning \$68,482 salary with total disbursements of \$173,288 last year. He is 23, according to a court filing.

The union in 2009 paid \$43,000 to send Cullen to the Vancouver Film School in British Columbia. The school describes itself as "Canada's premier entertainment arts institution and one of the most distinguished worldwide."

That seems an extravagant expense to Mehrens, the former Labor Department lawyer.

"What kind of other entities are out there where you could get forty-something thousand dollars for film school paid by your employer?" Mehrens said. "And that begs the question of whether that should have been counted as compensation for him rather than an official business expense."

But the Boilermakers periodically train staff, as do other unions and businesses, Stapp said. Program locations have included Harvard University and National Labor College, "as well as technical training venues for IT services and communications media so vital to the effective operation of any organization or business," he said.

Several members of the Creeden family also make a good living working for the Boilermakers, totaling \$624,000 in salary.

William Creeden earned \$255,836 salary and received \$392,117 total disbursements in 2011 as the international secretary-treasurer.

As director of information technology, Creeden's son, Ryan, received \$155,487 salary. Another family member, Brian, made \$70,036 as an engineer.

And for his work as assistant director of the history preservation department, nephew Kyle made \$142,767.

The wife of vice president Tom Baca is on the payroll as a secretary, and Stinger has two daughters with jobs at union headquarters.

Vice president Lawrence J. McManamon — whose salary in 2011 was \$255,844 and total disbursements were \$469,058 — has two children of his own working for union affiliates.

His son, Lawrence Jr., is a coordinator of the Boilermakers National Apprenticeship Program, earning \$270,622 in salary and benefits, according to 2010 tax records. Daughter Bridget Connors is a representative for the Boilermakers' Mobilization, Optimization, Stabilization and Training Trust, receiving \$172,797 in total compensation, according to 2010 tax records. McManamon Sr. is a trustee for both organizations.

That is only a sampling of the family ties involving union officers.

Besides Peterson, other family members either could not be reached or declined comment.

In his written response, Stapp said he could not comment on individual workers or consultants:

"All Boilermaker employees are hired based on their respective skills and experience as well as their desire to serve the best interests of the Boilermaker organization. The policy of the Boilermakers is to not publicly comment on specific employees or organizational consultants."

But employing family members is common in large corporations, Stapp said in an interview.

"You'll find the Hunts working for the Hunt family and the Kempers working for Commerce and United Missouri Bank...we could go on and on," Stapp said.

Watchdogs, however, pointed out that there's a big difference between family-owned corporations and nonprofits such as the Boilermakers that don't pay income tax.

They also called the Boilermaker jobs a classic case of nepotism.

"Especially for some of these young employees who are relatives of officers, it raises all kinds of alarm bells," Mehrens said. "It begs the question, did that person get the job based upon skills or qualifications, or did they get it based on who their father was?"

Traveling in style

The Boilermakers' headquarters itself in downtown Kansas City, Kan., is hardly extravagant.

The union moved into the original Old Brotherhood Building in 1921 and an adjoining 11-story New Brotherhood Building was constructed in 1948.

Nearly a decade ago, the union announced it would move its headquarters and main bank office to the Cedar Creek development in Olathe, where it had bought property.

The buildings were to be located on a 23-acre site overlooking the Shadow Glen Golf Course at Cedar Creek. The project was expected to cost about \$25 million.

Construction is on hold, though, said Pressley, a union vice president. "Nothing's been done," he said.

But when the union's officers get away from headquarters, they do it in style.

The union has an 18.75 percent ownership in a Piaggio airplane, which holds up to nine passengers. Today, a new one sells for about \$6 million.

The Boilermakers also have a 6.25 percent share in a second airplane, according to the union's Labor Department filing. The report says the union has "fractional ownership" in the two airplanes to "facilitate air travel by the international executive council and international employees throughout the United States and Canada."

Family members of some Boilermakers executives also fly on the private planes.

In 2011, the Boilermakers paid \$521,160 to Avantair, its aviation service provider, for maintenance and other fees associated with the planes.

Union watchdog groups say few unions have ownership in planes. The Machinists union has a Learjet, but the Teamsters union — which used to own several private jets — sold them years ago because of criticism.

"It's not a common thing," Mehrens said of the planes.

The planes haven't gone unnoticed by some of the rank-and-file members.

"Jones uses our dues money to pay for a time share on a private jet," the anonymous letter alleged, adding that Jones uses the jet "for his own convenience to attend all expenses paid conferences at warm locations in winter months..."

Union officers and their relatives also are allowed to fly first-class on commercial airlines, the union's tax documents show. Neither the first-class travel nor the charter travel by the union officers is considered taxable compensation, but travel by their family members is.

As for their destination, the union looks for inviting locales when it schedules conventions. In fiscal 2011 alone, Boilermaker officials traveled to:

Hilton Marco Island Beach Resort and Spa, which one event planner describes as an "island paradise" on the Gulf of Mexico, for the Boilermakers Annual Construction Division Conference. Cost: \$254,125. Marco Island is an annual destination for that meeting, which includes contractors.

- Kingston Plantation in Myrtle Beach, S.C., for an annual meeting of Boilermaker leaders, contractors and owners. Cost: \$71,405.
- The Fairmont Tremblant in Quebec for a conference. Cost: \$91,097.

Several of the conferences are required by the union's constitution and designed mainly for training of staff and

local lodge officials, Pressley said in the interview.

Stapp said the Boilermakers are no different from other unions and businesses that conduct training and business meetings throughout the country.

"Business meetings conducted in countries other than the United States and Canada are in conjunction with world labor organizations whose important work is critical to the representation of Boilermaker members in a global economy with multinational employers," he said.

Pheasants and fish

Once they're on the ground, officers make sure their stays are memorable.

About a year ago, members of the union's International Executive Council treated themselves to at least one gathering at a renowned hunting lodge in Gettysburg, S.D. The council — the president and eight other officers — listed the trip as a council meeting.

The lodge, called Paul Nelson Farm, is a favorite hunting spot of former Vice President Dick Cheney and Hall of Fame quarterback John Elway.

It's a luxurious resort that "attracts 700 hunters a year who are prepared to pay for the very best," according to a 2009 review in the magazine *Business Jet Traveler*.

The Paul Nelson Farm website offers a package that includes three days of hunting with guides and dogs, pheasant cleaning, and meals and beverages. For a group of six or more, a three-day package runs \$4,595 per person.

The Boilermakers paid a total of \$163,000, according to Labor Department reports they filed.

The union also paid \$12,854 in 2010 to Alaska Fly Fishing Adventures in Sterling, Alaska, but it is unclear who enjoyed the service, described as an "outfitter and tour guide."

That year, the union held an Alaska conference at which union officials met with contractors and owners.

In France, where officers have traveled to negotiate contracts, the union paid \$5,232 to Yachts de Paris, a "dinner cruise service provider."

But union officials also have fun much closer to their headquarters, especially at sporting events.

For example, the union has held a suite for several years at Kansas Speedway. The cost last year: \$40,210.

Stapp defended spending for recreational events.

"As most successful organizations recognize, sporting and entertainment activities and venues are important tools for relationship building with business partners and fellow organizations and are used in this organization's efforts to insure and expand the work opportunities of its members," he wrote.

But watchdog groups find the perks and benefits enjoyed by union officials to be unusual and profligate.

"This is a pork fest," said Ken Boehm, chairman of the National Legal and Policy Center in Falls Church, Va., a conservative union watchdog group.

"These things sound way out of line. They're not even in the same ZIP code as the line."

To reach Judy Thomas, call 816-234-4334 or send email to jthomas@kcstar.com.

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Year Title Gross Salary Total Compensation
 2010 INTERNATIONAL PRESIDENT \$334,387.00 \$730,657.00
 2009 INTERNATIONAL PRESIDENT \$276,388.00 \$524,052.00
 2008 INTERNATIONAL PRESIDENT \$313,799.00 \$411,566.00
 2007 INTERNATIONAL PRESIDENT \$269,138.00 \$450,112.00
 2006 INTERNATIONAL PRESIDENT \$219,365.00 \$353,513.00
 2005 INTERNATIONAL PRESIDENT \$183,972.00 \$341,007.00
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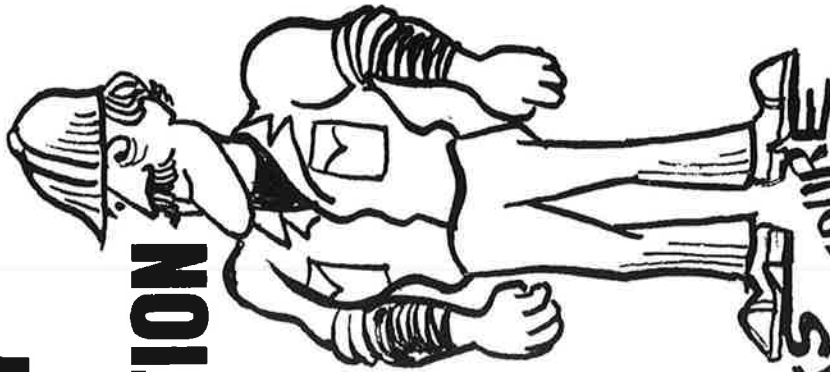


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UNION DEMOCRACY IN THE CONSTRUCTION TRADES



FAIR HIRING HALS
UNION GRIEVANCE PROCEDURE
FOR PROTECTION

Association for Union Democracy, Inc. (AUD)
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Introduction

There are scholarly works that presume to offer a comprehensive view of labor relations in the building and construction industry. This little booklet makes no such claim; but it does present the experience of rank and file workers, union insurgents, and union leaders. Here, in their own words, is the story of craft workers who have been out on the job sites with hammer and saw, wire cutters, acetylene torches, and power drills. From them, we can learn what many of the academicians do not know or will not see.

Even when they have just signed on to a new job, building trades workers are already wondering where the next job will come from. Work is temporary and seasonal, without job security, without seniority protection, without an effective grievance procedure. Construction workers must adjust to an industry that seems deliberately shaped to facilitate job-favoritism and blacklisting, an industry which, in the big cities, is regularly subject to exposés of grafting and racketeering usually based upon collusion among corrupt employers, public officials, and union officials.

The elected leaders of local unions who are devoted to the labor movement and who are anxious to protect the interests of their members face standard-cutting trade agreements imposed by international union offices without the opportunity for anyone to vote on them. And, when these local officers resist, they find themselves removed from office and their locals under trusteeship.

In Canada, whole divisions of some construction unions find that their internationals, based in Washington, try to impose a prefabricated officialdom upon them.

Such is the world where good construction union members and leaders set out to defend decent and democratic unionism. Theirs is a formidable task, and they simply cannot be left to do the job unaided. The power balance inside their unions is too heavily weighted on the side of an officialdom which controls the election machinery, the appeals process, and often access to jobs. The union reformer needs help from the democratic-minded public but has nowhere to turn except under very limited conditions to government agencies which have been ineffective in protecting their rights.

To fill that need, the Association for Union Democracy was founded in 1969 to establish a nationwide union democracy network, an informal collaboration among unionists, workers rights attorneys, law professors, labor educators, civil libertarians, and others who recognize how vital is union democracy for the labor movement and for our country. This pamphlet is a modest contribution toward that effort.

Published by:

Association for Union Democracy
30 Third Avenue
Brooklyn, NY 11217

and

AUD West Coast Center for Union Democracy
1720 Oregon Street
Berkeley, California 94703

Illustrations and cover by Frank Bresinger

© 1985 Association for Union Democracy

ISBN 0-9602244-2-4

Library of Congress Catalog Card No. 85-70160

Blacklisting in construction

By Herman Benson

You are dead wrong if you think that blacklisting went out of style in the thirties after the LaFollette hearings and the Wagner Act. The practice goes on, especially in the construction trades. Who will risk criticizing employers or union officials if the critic ends up jobless? Only the brave, the stubbornly independent minded, the worker least encumbered by family responsibilities. But democracy requires more than the support of a courageous minority, it needs a measure of participation by the majority. Blacklisting is devastating in its impact on union democracy. Nowhere is this fact more evident than in the building and construction trades where jobs are intermittent and unionists are always about to end up one job and are thinking about finding the next one.

These thoughts come to mind now that we are in possession of a copy of the actual blacklist used in recent years by at least one large construction company in Arizona. The list is bluntly entitled: "The following people are not considered qualified to be hired by this company." There follows a list of the names of 252 workers.

Who are these people? Without a staff of detectives it is impossible to trace them all; but one determined, energetic electrician, who was outraged to discover his name on the list, managed enough private research to make certain basic findings:

Not qualified? Among those listed are many highly skilled electricians who have earned their living at the trade for a whole working lifetime. If the company declares them "not qualified" it must be because they are judged by standards that are unrelated to the quality of their work or their ability as journeymen.

Bad record with the company? Many of those on the list never at any time worked for the company and could not have had any record with it. Obviously the list must have been compiled by some central employer service to weed out "undesirables."

Who are the undesirables? Knowing the construction trades, we can guess: good unionists who insist upon contract enforce-

ment, workers with the temerity to file grievances or to protest unsafe conditions, unionists who criticize union officials for undemocratic practices or for ignoring contract violations.

Unionists who end up on this kind of construction blacklist are doomed to have trouble getting work and might be forced to leave town and become travellers. If they persist in standing up for too many rights in too many cities, they might as well leave the trade and start looking for some other line of work to pay the rent and feed their families.

In the construction trades, job rights, seniority protection, grievance procedures—which are taken for granted almost everywhere in the labor movement—are simply nonexistent. Take for example the standard clause which the International Brotherhood of Electrical Workers "recommends" be written into all local construction collective bargaining agreements. Section 4.03 of the standard IBEW contract reads: "The Employer shall have the right to reject any applicant for employment." In the IBEW such a "recommendation" has the force of union law, for each local must submit its contract for approval to the national office.

Under this provision, no construction electrician has the guarantee of a job, even though he or she has top spot on the hiring hall list. The union hiring hall may dispatch the worker; but the employer can simply reject the applicant without offering a word of explanation. Under the contract, the rejected worker has no recourse at all. If an IBEW local, eager to stand up for its membership and give them elementary union protection, tries to curb the arbitrary hiring authority of the local contractors, it runs up against the veto power of its own international union office.

Seniority as commonly known does not exist in construction work. When one job is completed, workers look for another. They have no right to be hired regardless of how long in the trade or how high on the hiring list. An employer—all employers!—can reject their application without just cause.

Under these conditions—no hiring rights, no seniority, secret blacklists—individual grievance procedure becomes a farce. Win or lose at the beginning, a grievant is bound to lose in the long run. Workers who file grievances could occasionally gain a point, but at what cost? They are not likely ever to be hired again by that company. And, if they get on the unlucky big blacklist, they could find it impossible to get a job from any employer in the locality.

The lack of fair hiring procedures and of job security poisons democracy in the construction unions. Union officials come under fire inside their unions when they fail to defend their members against the employers. In the construction trades, these officials need not dirty their hands by directly suppressing the rights of dissidents. That job can be left to obliging employers who are normally happy to get rid of potential "troublemakers."

If a construction union official denies union members their right to free speech, fair elections, and due process in their

On the job and in the union

On April 22-24, 1983, the Association for Union Democracy held its first west coast conference on union democracy at the University of California Law School (Boalt Hall) in Berkeley, California. The conference, which was jointly sponsored with the university's Industrial Relations Law Journal, attracted many construction workers from different trades. The next section of this pamphlet is based upon the transcript of speeches by attorney William Schendel, John Donaldson, Charles Delgado, Forrest Darby, and John Reimann, all of whom addressed a special panel session on problems of construction workers.

Frank Schonfeld, who chaired the Berkeley conference panel discussion on construction workers' problems, has been a member of the Brotherhood of Painters for 35 years and is now retired. He led a reform movement in Painters District Council 9 in New York City and was a party in some landmark union democracy cases in Federal court. He was elected Secretary Treasurer of Painters District Council 9, the top position, in 1967 and served until 1973. He is now an active member of the AUD Advisory Board. We are indebted to him and to his wife Jean Schonfeld who together typed and edited the transcript of sessions at the Berkeley conference in preparation for this version of the discussions.

Frank Schonfeld:

In discussions among unionists on how to strengthen union democracy there are usually two schools of thought. Some emphasize the need to strengthen Federal law and the advisability of appealing to the courts and administrative agencies for recourse. Others are dubious about the effectiveness of legal action and emphasize instead the need to reach the rank and file, educate them and organize them, and win them over to democratic policies.

My own experience has been that it is necessary to combine both these strategies. If you're out there battling to get results for your membership, you must use every weapon at your command. Certainly the primary weapon is the support of your membership. No question about that; without it any court decision, any law doesn't mean much.



"OH HIM... HE UPDATES THE BLACKLIST!"

unions, they have recourse under Federal law. But if they are denied jobs by construction employers, they have virtually no recourse whatsoever, unless that employer commits some blatant stupidity, so arrant that even the National Labor Relations Board can discover a violation of the law, a rare case indeed.

Construction unions do nothing to remedy this sad state of affairs, this scandal of the American labor movement, probably because it gives union officials the whip hand over their membership.

On the other hand, it is a fact that this is a democratic country, whatever its faults; and labor does have a measure of power; citizens do have power. There are laws on the books which can protect the rights of union members. By all means, let's use them.

And there are capable attorneys who will help, like my friend Dan Clifton, a wonderful young attorney who has helped us so much in New York. He's here to answer legal questions.

Among our speakers is another attorney, William Schendel from Alaska, who has represented rank and filers in several construction unions: Laborers, Carpenters, Electricians, and others. He will speak from experience on the rights of construction workers in their hiring halls. He is a member of the AUD Advisory Board.

John Reimann, another scheduled speaker, is a carpenter. He is recording secretary of Carpenters Local 36 in Oakland. Two other speakers are electricians.

Forrest Darby, who is now a working rank and file electrician, has been a union member for twenty years. He is a member of IBEW Local 1547 in Alaska and was formerly one of its business agents.

Charles Delgado, who is business manager of IBEW Local 527 in Galveston, Texas, recently conducted a remarkably effective campaign, as an insurgent, at the last IBEW convention, for international president.

The IBEW does not provide the most encouraging atmosphere for union democracy. But there was great progress made in this union as a result of a Federal suit by Dan Boswell, a member of IBEW Local 164 in New Jersey. Disciplinary proceedings that had been used against IBEW members who criticized official policy or who ran against administration candidates were thrown out by the district court. The IBEW had to remove those provisions in its constitution which had given the leadership an easy device for stifling dissent.

But then the IBEW leadership, with the guidance of their attorneys, came up with a new device to tie the hands of IBEW members who sought solutions to their problems. They established rules supposedly to prevent outsiders from interfering in union affairs. These rules, authorized at the last IBEW convention, refer to "outsiders"; however, as I read them, they are really directed at curbing the ability of union members to form opposition groups and use their democratic rights of free speech and assembly in union elections.

And, finally, we have with us Brother John Donaldson whom I have heard at other AUD conferences in Buffalo and Albany, New York. He is a vice president of the Ontario Federation of Labor and president of the big Ironworkers Local 721 in Canada. His presence will remind us that the issue of union democracy applies not only to union members in their locals, but to locals within their district councils, and to district councils in the internationals. John is leading a fight in the building trades for the right of Canadian workers to choose and to control the representatives who speak for them.

Construction worker rights in hiring halls

by William Schendel

Problems with dues and trusteeships and elections, of course, arise in all kinds of locals, construction or not; but at least two problems are almost unique to construction workers: one is the result of high unemployment among construction workers, coupled with the pension situation that is typical for construction workers, namely, a ten-year pension vesting requirement and nonportability of pension credits. Because of the difficulty of working the thousand or more hours each year that are required to accumulate credits, many construction workers work for years and years and end up without vested pensions. That problem is not directly connected with union democracy and cannot, as far as I know, be attacked by litigation. The only solution, I think, lies in new laws. The second special construction industry problem, however, *can* be attacked under current laws; that is the problem of unfairness in hiring hall dispatching.

Construction workers who use hiring halls have at least five important rights. The Landrum-Griffin Act itself provides very few rights related to the fair operation of hiring halls. The bases for the rights of hiring hall users are, instead, Sections 8(b)(1)-(A) and 8(b)(2) of the National Labor Relations Act, particularly section 8(b)(1)(A), which requires unions to abide by what is called the duty of fair representation. The National Labor Relations Board is charged with enforcing these rights. I can identify five distinct rights that flow from the NLRB. These rights apply whether the dispatch rules are established by the contract or are set unilaterally by the union. *Operating Engineers Local 406*, 262 NLRB No. 6 (1982). These rights and the cases that establish them are briefly as follows:

1

First of all, the union has a duty to disclose the actual dispatch rules and interpretations to the people using the hiring hall. *Laborers Local 252*, 233 NLRB 1358, 1361 (1977). This is one area where the Landrum-Griffin Act probably does apply, because the typical construction union contract incorporates, either word-for-word or by reference, the hiring-hall rules. If the contract does set out the dispatch rules, Section

104 of Landrum-Griffin, 29 U.S.C. §414, which gives you a right to obtain a copy of the contract, also gives you a right to have a copy of the hiring-hall rules and all of the interpretations that flow from it. You have more than the right merely to *inspect* the contract; you have the right to *obtain your own copy of the contract*, including the dispatch rules, and any amendments to those rules.

II

The second rule is that before the union can change dispatch rules, it must have good reasons. That obligation flows from the "duty of fair representation," because the union office⁸ cannot be arbitrary in how they run the union. The case in point is *Operating Engineers Local 406*.

III

The third rule flows from the first two. Not only must the union have good reason to change rules, but when it does make any change in rules, it must promptly disclose these changes to the users of the hiring hall, so they do not mistakenly operate under the old rules. *Operating Engineers Local 406*.

IV

The fourth rule is that the union must disclose an individual's "relative position on the out-of-work register," either by maintaining an out-of-work list that can be reviewed by users, or by permitting the individual to use the union's records to compile his own out-of-work list. *Operating Engineers Local 324*, 226 NLRB 587 (1976).

V

The fifth rule is particularly handy in deciding whether to risk filing charges against your union for unfair operation of a hiring hall. Under this rule, if you suspect that somebody has been called out of order or that somebody has been given an "A" card when he or she qualifies only for a "B" card, you have the right, as a person who uses the hiring hall, to ask your dispatcher to prove the legitimacy of that dispatch or that place on the out-of-work list. The union can impose certain limitations: a) it need not permit you to *copy* the records; b) you cannot be burdensome in your requests; and c) the union can refuse to disclose "confidential" information. Names of registrants, their last place of work, and their dates of signing the out-of-work register, are *not* confidential. *Culinary Local 165*, 261 NLRB No. 67 (1982). In order to avoid problems, you should be able to focus your request on a particular dispatch. You cannot go into the hall and try to go through the out-of-work lists and dispatch lists over months and months. But if you do focus your request, you have a right to inspect those records. One case has even suggested that *where the dispatch rules are set by contract*, a hiring hall user has a right to *copy* dispatch records, because the dispatch records are part of the contract required to be given to requesting employees under Section 104 of the Landrum-Griffin Act. *Culinary Local 165*.

If you can show you were unfairly passed over for a dis-

patch, you have a right to file an unfair labor practice charge with the Board and ask the Board to do a number of things: one is to force the union to give you the next dispatch; another is to get the pay that you lost if, as a result of the illegal dispatch, you lost a job. Another possible remedy is to order the union to retain its dispatch records for several years and to display its records to hiring hall users periodically. *United Association Local 403*, 261 NLRB No. 40 (1982). If the union has refused you permission to inspect the records or any of the other rights I have mentioned you can also file a charge with the Board. You must file your NLRB charge within six months of the date of the alleged illegal act.

The one group within the construction trades that is probably most discriminated against is travelers—people who belong to one local and try to find work out of a sister local. The Labor Board and the Circuit Court of Appeals have repeatedly held that the union's 8(b)(2) obligation not to discriminate on the basis of union status means not only that it cannot discriminate against those who are not members of any union, *but it also cannot discriminate against travelers from another local of the same union*. The cases that established that rule are *United Association v. NLRB*, 655 F.2d 93 (9th Cir. 1981), and *United Association Local 403*.

The Canadian story

by John Donaldson

I want to bring you information on what's happening in the Canadian labor movement. I'm sure you'd agree that if the AFL and the CIO were to split up tomorrow, we would all know about it in North America. But I'm also sure that you don't know that this is exactly what has happened in the Canadian labor movement. It's in turmoil because of that split, a very complicated situation; and I don't believe that you will grasp all the issues even after I've finished speaking.

As you know, there was an AFL-CIO merger in 1955. The same kind of merger took place in Canada when the Trades and Labor Congress and the Canadian Congress of Labor merged and became the Canadian Labor Congress. (You see

we agreed on a name. In the United States, you couldn't even agree on a new name.)

The AFL-CIO chartered the Building Trades Department. There were some attempts in Canada, at that time, to charter a Canadian Building Trades Department under the CLC, which seemed quite natural. But the project never got off the back burner. In the archives of some Toronto locals, I found telegrams from various international headquarters in the U.S.A. instructing Canadian business managers and locals in my area not to have anything to do with such a movement. In any event, it didn't take place, and of course the Canadian building tradesmen remained subject to the AFL-CIO Building Trades Department constitution.

We, in Canada, have a structure similar to the AFL-CIO's. The House of Labor in Canada is the Canadian Labor Congress. We have provincial federations and also municipal labor councils. The Labor Council in Toronto is one of the oldest councils in Canada. It's a hundred and fourteen years old. The CLC is very much involved in politics in Canada; it is affiliated to the New Democratic Party. As a matter of fact, there is one province where the NDP is in power. We just lost an election about a year ago in another province where the NDP was in power for over thirty years. It's a democratic socialist party; with thirty-odd seats in the Federal Parliament, it is a significant political factor. Most of the industrial local unions in Canada are affiliated to it and also some of the building trades locals. We are quite happy with the Canadian Labor Congress, but apparently the building trades internationals are not. At the 1974 CLC convention, a resolution was adopted which I would like to quote.

The first part dealt with the election of Canadian officers by Canadians. Second, "Policies to deal with national affairs to be determined by the elected representatives to have full authority to speak for the union in Canada." Fourth, "where an international union is affiliated to an international Trade Secretariat, the Canadian section of that union should be affiliated separately to insure a Canadian presence and voice at international industry level." Fifth, "That international unions take whatever action is necessary to insure that the Canadian membership will not be prevented by constitutional requirements or policy decisions from participating in the social, cultural, economic and political life of the Canadian community."

That was passed by a large majority, more than the two-thirds vote required. Well that's when things started to happen, after that 1974 convention. Before the '76 convention, the international building trades unions stopped paying per capita tax to the Canadian Labor Congress because, they said, the resolution interfered with their constitutions. The president of the CLC at that time, Joe Morris, met with the Building Trades in Washington; he promised them that the CLC would attempt to remove the Canadian standards and change the voting procedure at conventions because the Building Trades didn't like the way we vote at CLC conventions.

Well, when it came before that convention, the delegates wouldn't change it. It was a close vote. It needed two-thirds again. They wouldn't budge.

Before the next convention, the Building Trades internationals left the CLC again and stopped paying per capita dues again. They came back in again before the 1980 convention where they proposed a bloc-voting method once more. But it was rejected. So they got out.

After they left in 1980, they never came back. As a pretext for leaving—they didn't use the Canadian autonomy issue—they said it was the situation in Quebec which involved the electricians. That's another story, so complicated that I really don't want to go into it.

There were many meetings between the CLC and the Building Trades in Washington. One of the major disputed issues was how delegates were to be selected for Canadian Labor Congress conventions. At our CLC conventions, delegates have always been chosen *by the local unions*. But the Building Trades don't want that. They prefer the system you use in the United States where delegates to AFL-CIO conventions are selected by international union offices. If they had their way, the delegates to our Canadian labor conventions would be handpicked by international officers sitting in Washington.

You talk about democracy! Delegates to our CLC conventions would never go for that kind of change. But the Building Trades had a very simple solution: ignore the delegates! In a position paper they presented to the CLC they proposed that if the change could not be put over at a convention, the change should be imposed from above. The top officials should simply announce that they were now interpreting the CLC constitution so that delegates would be chosen by the international offices from then on. And they proposed that no delegates' credentials be issued to local unions but sent to the internationals instead. And they would also bar locals from even submitting resolutions to CLC conventions. These are some of the issues that led to the breakup.

Then things got hot.

It was a year since the Building Trades internationals had paid any per capita tax. The CLC constitution provides that after three months without paying the tax, affiliates will be suspended. Finally, the CLC suspended the Building Trades in 1981. The CLC then set up its own Building Trades Department in 1982 and asked the Canadian building trades locals, that is, those affiliated to the U.S.-based internationals, to join. There was very little response. My own Ironworkers local joined and so did a few Laborers locals. A few more locals are going to affiliate shortly.

The AFL-CIO Building Trades internationals set up a structure in Canada called the Canadian Federation of Labor, not just for the building trades, but as an opposing structure to the CLC. Meetings were held with steelworkers, auto workers, with all the industrial unions to induce them to join. Of course, they got no response from the industrial unions. As a matter

of fact, three of the building trades internationals did not join: the Laborers, the Ironworkers, and the Carpenters. So here we have a Canadian Labor Congress, the legitimate House of Labor. And we also have the Washington-financed Canadian Federation of Labor. And we have some trades which are affiliated to neither of them. So it becomes quite complicated.

There is an even more complicated situation. In Quebec, where part of several trades have broken away from their internationals, the electricians, I believe, have completely left. Most of the plumbers and some of the carpenters have joined the Quebec Federation of Labor's Building Trades Department. (The Quebec Federation is affiliated to the CLC.) I can see some of you look confused. Sometimes even I don't understand it!

The Building Trades internationals don't seem to realize that Canada is a sovereign nation, never mind Quebec as a separate province in Canada. The Canadian Labor Congress and the New Democratic Party took the position that Quebec should be allowed to determine its own destiny, because we realize that its culture and language are different. I'm afraid that our internationals don't understand anything like that. Some of us in the building trades are split. I'm not going to kid you that we're all together on the issues. Many of them would like to have been here at this conference, especially from the British Columbia area; but they're not here because they have been threatened with trusteeships if they are not careful. They've certainly been threatened with trusteeships if they join the CLC on their own.

I would like to use this conference platform to issue a warning to the international Building Trades unions. They don't seem to realize that in Canada a great national sentiment is on the rise. Most building trades unionists believe in international unionism. But we may have our own perception of what international unionism should be. We don't want to split from our internationals, but under the present structure, we have no voice in setting policy in Canada for our respective memberships. At international conventions we're in a minority. And I warn that in my opinion the building trades are in danger of losing all their local unions in the not distant future. They've got to recognize Canada as a sovereign nation and allow us to settle our own policies, our own destiny, to pursue our aspirations as Canadian trade unionists.

Just a few words on the recent trusteeship that the Ironworkers in Ontario have just come out of. The District Council was put under trusteeship by our international. We went to court, managed to get a hearing, and we won that battle. Our international was found guilty of violating our Labor Relations Act. The Ontario labor board is probably one of the most right-wing boards in North America. Yet it said that our general president, who took the stand for three days, was "less than candid." They doubted his credibility. Anyway, we were successful. It is a very long story, and we won't have time for it here.

As you know, the AFL-CIO constitution covers all of North America. It covers both the international unions in Canada and the AFL-CIO Building Trades Department. A number of years ago, some of the brothers in the building trades felt that we should have a Building Trades Department in Canada. Of course in Canada, we have a different idea of democracy from that of some leaders of various Building Trades Unions. We like to see people get elected to office, we like to see them elected to conventions, conferences or whatever.

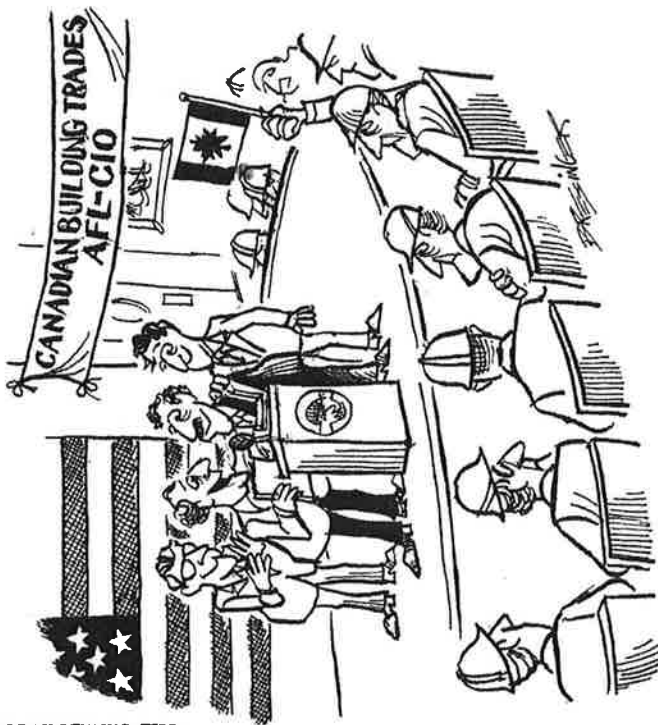
Around 1975 or 1976, I'm not quite sure of the date, a number of business managers across Canada decided that it was time we had a Building Trades Department in Canada. They petitioned the various internationals in the Building Trades Department in Washington that it be set up. It was denied out of hand. After many pleadings, the Canadians decided that they would go ahead and set it up by themselves. They chose Winnipeg as the site where they would get together. Over two hundred business managers from the various trades made known their intention to attend. About a week before it was supposed to take place, telegrams went out from Washington to every building trades local in Canada telling them that they would be in violation of the constitution if they attended that conference, and would be liable to charges and trusteeship. Most of them attended anyway. The majority of locals were represented at that conference. They drew up a constitution and by-laws and set a date for the next meeting where elected delegates could ratify a constitution.

But before that happened, the Internationals decided, "Uh-oh! They're going to do it anyway." So they sent letters to the various unions telling them, "You were right after all. But, we'll set one up for you. And we, of course, will pay for everything." And they did. I'd like to just describe how they did that.

The provincial structure in Canada, I believe, is the same as the state structure in the U.S. We elect delegates from the floor of each local to go to the provincial labor body. In the draft constitution for the Canadian Building Trades Department that the Canadians had put together in Winnipeg, it was going to be the same way. But when the internationals took over, they decided they would appoint all the delegates.

Now, I don't know, in the AFL-CIO Building Trades Department, how you get to be a delegate. I've never been there as a delegate, but I have known some Canadian councils that have sent delegates there; they said that at these AFL-CIO Building Trades meetings there is very little Canadian content; all they speak about is problems in the United States. We don't mind that, but we wanted someplace where we could discuss Canadian problems.

The international officials decided that each organization would have so many delegates. And that each International organization would appoint the delegates. And that's how in 1978 they appointed the delegates to the First Canadian Conference for building tradesmen. Notice they didn't call it a convention, only a conference; it was held in Toronto. They told us it was



"MR. CHAIRMAN, MAY I PRESENT THIS COMPLETED CONSTITUTION PREPARED FOR YOU IN WASHINGTON!"

going to be democratic. But when we arrived and picked up the kit, I found that the sixteen main executives of the conference had already been appointed. The president had been appointed. And, lo and behold, the Executive was made up of vice-presidents of the Internationals, so-called Canadian Directors. So, there was the control.

Guess who was the president of the *Canadian Building Trades Department*? Brother Robert Georgine, president of the AFL-CIO Building Trades Department in Washington. So much for democracy or autonomy. They told us: Yes, you can send in resolutions. But not from locals, only from municipal building trades departments and provincial departments.

At least that seemed like something. But here's the kicker. If resolutions were passed here in Canada, that did not mean that they were actually adopted as policy. No, they had to go to the AFL-CIO Building Trades Department in Washington to be passed there before we could apply them to Canada. So we didn't get much there either.

As you brothers in the United States can see, we have the same problems of democracy that you face, but with special Canadian variations.

Running a local

By Charles Delgado

I want to tell you about some of my activities; and there is a purpose for it. I am presently business manager of my local union; I've served in that capacity for eight years, and previous to that as an assistant to the business manager in my local union for ten years. I also served as president, recording secretary, and as apprenticeship director of my union. I worked for the International on temporary assignment as an organizer. I'm president of the State Association of Electrical Workers in Texas. I'm a past Democratic County Chairman, and presently serve on the Democratic Executive Committee as the representative from the Eleventh Senatorial District in Texas. In addition, I'm president of the Central Labor Council in my area. I'm president of the Galveston County Community Action Council. I'm a member of the Board of Trustees of the Galveston County Beach Park Board, and I was recently elected to the Board of Trustees of the Mainland Community College. I say all these things to tell you that those are the positions that I presently hold. Those are the positions that I still hold after mounting a campaign against the international president of the IBEW.

I guess I'm trying to reassure those of you who have some fear of reprisals and some reluctance to being associated with an organization of this type and people of this type. I'm living proof that you can do these things if you're right, and you can survive the undemocratic reprisal system of many of the trade unions in this country.

I'd like to tell you just a little bit about my recent successful election to the Board of Trustees of my college. That doesn't sound like it would be related except that I've spent about the last year in assisting the formation of a small AFT group at the college. They finally organized and then attempted to become recognized. And don't misinterpret the word "recognized" as recognition for bargaining purposes, because that's not allowed in the State of Texas for public employees and school teachers, but merely to be recognized as existing on the college campus.

There was another union on the campus, AFSCME, representing the maintenance employees. Board policy at the college had long since been established that a union on a campus was entitled to dues deduction, and entitled to freely operate on a campus. But when the AFT group organized, the new president refused these customary rights to the faculty union. He had recently been hired by the Board of Trustees, and he'd

been taken in tow by what I choose to call the other side and appeared at the Rotary Club and the Chamber of Commerce and all of these types of organization in the community. They did such a good brain-washing job on him that he promised this section of the community that there wouldn't be a union of faculty members on that college campus. We took him on in the labor movement to the extent that I finally got involved in running for a position on the Board of Trustees. In the election, the entire AFT group was immediately branded socialist at best and communist at worst. Those of us who were running for the trustee positions, being supported by that faction, were also labeled socialist, communist or whatever. But we were successful because we were right. Last night in a discussion with some of my buddies here, which lasted late into the wee hours, "Dusty" Rhodes happened to mention "Back in the days of McCarthyism," and I stopped him right there. I said, "Hell, the days of McCarthyism are not past. They are still here, you know."

I'm so in love with First Amendment rights in our U.S. constitution that I absolutely resent anyone indicating by innuendo or by any other way that I can't associate with, speak to, and mingle with anybody that I choose. This goes back to a conversation I had with Herman Benson when he first contacted me about appearing at this convention. I told him I'd have to call him back after I checked my schedule and to see if I could afford to make the trip. I did call him back and told him that everything was in line, that I could be here. His next question was, "Do you want to be listed or do you want to kind of come on the QT?" I told him that when I feel like I'm right in doing the things that I'm doing I have no hesitation in having my name listed.

Regarding building trades problems, let me first say that there are many fine Brothers and Sisters in the building trades in leadership positions similar to mine whose hearts and minds and philosophies are in the right place, but who are so eaten up with fear and intimidation by our national organizations that they will not, or do not know how, to participate and raise the hell that needs to be raised about the things that bother all of us. Further, I would like to respond, on behalf of our building trades Brothers and Sisters, to some of the comments made by Tony Mazzocchi yesterday indicating that in many instances the OCAW and the Building Trades did not get along and that the OCAW picket lines, in many instances, were not honored. I only wish to say, that while this may be true in some area, in the Galveston-Texas City area, we have never crossed an OCAW or any other picket line, nor do we intend to. Unfortunately, some of the International Building Trades Unions have entered into sweetheart agreements with contractors doing maintenance work containing language that orders the employees to ignore any and all picket lines and to man the work or face the consequences of trusteeship over their local unions.

So I don't know what's going to happen at the next OCAW

strike with some of the building trades international contracts. I've read a couple of them. One of them is the Painters' and one is the Pipefitters'. They specifically address picket lines and say, "You will go in and do that work on these international contracts." I could talk for hours on international contracts, but I won't bore you with all that, except to say that many of the international unions and international building trades unions collectively have entered into some very, very serious concessionary type of contracts, giving them to contractors without any kind of dialogue with the unions or the building trades on a local level. They merely call a meeting to tell us how they're going to implement the contract that's been awarded to a certain contractor on some particular properties.

An example of that just recently: the Ebasco Company, a large national general contractor, was given a contract to do maintenance work on all of the Houston Light and Power plants. I have three H L & P plants in my jurisdiction and my sister local union, the Houston local, has ten or eleven. There are thirteen or fourteen power plants in the two adjacent local unions. We have had union people working on these power plants from the time they were built until the present. Our people have always been working in these plants, union people under building trades contracts, under our own negotiated local IBEW contracts. Overnight those contracts were done away with, and Ebasco was given a contract by the International President's Maintenance Committee, which is a committee comprised of a representative of all international B & C T's unions. Among other things that the contract allowed was a terrible cut in wages. They grouped all building trades crafts into Classification A, B, C and D. For explanation purposes, the A Group included electricians, pipefitters, and ironworkers, etc. They took all of the locally negotiated wage packages of those various crafts, averaged the wage package out, took 90% of that wage package, and then made that the wage package for each local union. Then if you had fringe benefits, you had to reduce that wage package by all your fringe benefits. As an example: In the IBEW we had a wage package that was somewhere around the \$22 mark. On the pay check was a \$17.57 wage. When the contract was awarded to Ebasco the average times the 90% reduced the wage package from \$22 to \$16.46—and then when you subtracted all the fringes from the \$16.46, our guys overnight were working for less than \$13.50 an hour.

So we have been involved in some concessionary agreements ourselves, not of our own making, but from the International. But all the problems that I can speak of in the IBEW, and the other building trades, are just particular problems that emanate from what really happens up above. And that's what we're here to talk about.

Our apathy—or general apathy at my level—has resulted in an abdication of our responsibility to our memberships in allowing these things to happen to us. When we're called on to justify the actions of the international organizations that come

in and impose these contracts, and do other things that we don't approve of, we take the easy road and say, "Well, fellows, you know, the International did that, we didn't have any control over it. Now my hands are clean and there is nothing we can do about it." That's the type of attitude that usually comes from the guys at my level in my organization—and other building trades organizations.

Everything I say about the IBEW, because that's the one I know most about, you can generally apply to all the other building trades crafts. You look at that, and you say, "What do we do about things like that?" Well, it's a very complex question and the simple answer to such complex questions is: either make the officers be more responsive to the rank-and-file membership or replace the officers. That's the simple answer, and I've tried it. We were not successful, but we did bring about some changes. We did at least show our brothers and sisters in the IBEW that you can raise hell, you can become indignant, and you can take positive actions to bring about some changes without the fear of getting knocked off on the road somewhere.

I certainly considered all of the negatives before getting into my campaign, and as a result I was very careful in all that I did. I carefully researched all of the issues that I raised; I was most careful in all of the literature that I circulated so that the administration would not be able to refute anything that I said or wrote.

Unfortunately we now face what I choose to call the "insider rule." In the Steelworkers it's been referred to as the outsider rule; but in the IBEW it's the insider rule. The new restrictions on raising funds to mount a campaign against international officers will prevent anyone from ever doing what I attempted to do unless that rule is repealed. I was trying to get a message across to a million members, but trying to get a message even to three thousand delegates is just an impossible chore, a terrible chore. There's no way that anyone will be able to mount an effective campaign, without any money, against the international officers. And it's unreasonable to think that you can put together any amount of campaign funds under the rule that the IBEW has adopted where no IBEW member can contribute more than \$10 without having his name, rank, and serial number sent to the president of the IBEW. So that's just out of the question from now on. I operated my total campaign on contributions from members of the IBEW, from all branches of the IBEW; and none of the names were ever reported. If I had to report the names of all the people who contributed money in my last campaign, I'd hesitate to say what would happen to a lot of them.

But even without this rule, the odds against ousting an incumbent are almost impossible. I thought I was a pretty smart guy when I started out, and I developed a strategy that looked good on paper. Even knowing all the tools that the incumbent had to work with, I still thought that I could win.

The first step in my strategy was to bring about a secret

ballot election in our union. There are a few industrial unions where they have secret ballot elections. In our union the international president and secretary-treasurer are elected by open roll call vote at conventions where the delegates have to stand up and be counted. It's a vote in numerical order, starting with Local 1 and ending with Local 2500 or so. The disadvantages are: First, some people don't want to stand up and be counted; and second, other people may be willing to stand up and be counted for the opposition; but by the time it gets to their turn, the election outcome is obvious, so they do not want to expose themselves. Instead, they get on the bandwagon and cast their ballot for the incumbent. And third, members in those twenty hundred locals never get to vote. We published an accurate fact sheet—and did a good job, I thought—and tried to bring about a membership referendum for a secret ballot prior to the convention. We were able to accumulate 172 petitions by 172 different local unions in the United States and Canada, and hand-carried them to the IBEW office in Washington to induce the Executive Council to order a referendum vote on that issue. That's over 10% of the 1500 local unions in the IBEW, locals that had the guts to sign a petition which was fairly certain to put them on the IBEW blacklist. And I think that was a tremendous accomplishment, not on my part, an accomplishment of finally raising the conscience of that many people in the IBEW—that they were willing to put their name on a line and be counted. Our constitution provides that you need only five local unions on a petition to request a referendum, but the Executive Council has the authority to recommend or reject that request. The Executive Council inspected the petition and made note of the 172 local unions that had signed. It then rejected the request for a referendum, stating that it was "not in the best interests of the IBEW."

You have to understand that practically every International officer and International Executive Council member has gotten there through appointment. There are only two people left now who were originally elected to their positions, one in the Executive Council and one vice-president who completely upset the apple cart at convention elections. They threw a very definite chilling fear into the International office. Their election was completely and totally unexpected. These are the only two people who serve in their international positions by virtue of an election. Everybody else got there by being appointed, including the president, secretary-treasurer, chairman of the Executive Council, seven members of the Executive Council, and every vice-president except one; and we have twelve vice-presidents and eight councilmen. So they're all hostages to the president.

Our constitution, incidentally, to add a little bit of levity to my talk, the IBEW constitution is the "most democratic constitution" in the trade union movement. That is a quote from our President's speech at last Saturday's Construction Conference talk in Washington. Of course, it's ludicrous to believe that. Moreover, even the democratic procedures that are ac-

tually provided in that constitution are not upheld by our officers. They do not feel restrained by any constitutional provisions. We don't have an effective appeal procedure. The appeal procedure starts at the local union level and travels up through all of the appointed officers of the president. So you can imagine how much opportunity you have of getting any kind of an impartial appeal procedure through that organization.

Most of the building trades unions' constitutions are similarly constructed. I think that ours is the most repressive organization in the building trades; and yet when I talk to my other building trades cohorts, they tell me ours is nothing compared to theirs. The Laborers tell me that they have their constitution with all the amendments printed up before the convention starts. But they've done a good job in one area. All of the building trade unions have done a heck of a job in keeping a low profile. You don't ever read about the building trades unions being repressive organizations. You read about the Steelworkers conflict, you read about the Mineworkers conflict. You read about the Teamsters. You read about all of the industrial unions. But you don't ever read anything about the building trades unions. They keep this very low profile. They're the most "right wing" (for lack of a better word) organizations in the trade union movement. They don't deal in social justice and economic justice for the poor and the underprivileged—and I'm concerned about those things. They are very self-centered—and I can speak about those things because I am a building tradesman; and I feel that I have a right to criticize my own organization when necessary.

So I don't know the answers to bringing about democracy in the building trades unions. I know some things that don't work. I've tried a lot of them. I think the only way that we can implement democratic principles in building trades unions is to organize a network for communication and education of the rank-and-file members. We don't have it at my level. The union bureaucracy has a strong incentive to stay up there. That is one of the problems in the building trades, and I suspect in the other unions also. When a guy, like myself, who is an electrician, becomes a business manager through some quirk of luck and gets to put on a suit and tie and doesn't have to get out in the weather and twist wires or run conduit, he gets to thinking, you know, "This is the life. This is where I need to be, and I'm going to start protecting myself against every intrusion on this type of life. I never want to go back there and climb the pipe rack and run pipe. I don't want to get at the other end of that damn piece of conduit and pull wire and be subject to layoff every time the job goes down." So officials start protecting themselves. We, at my level, start becoming management, and those people above us are super-management. Most union leaders have completely isolated themselves from any notion of ever returning to those pits that we came from. And that's the real problem. I know that there are a lot of people in my position whose heart is in the

right place, but they just don't want to turn loose what they have. But the network that I speak of has to be a network directed to rank-and-file members, so that the rank-and-file can be educated and informed about issues that affect them, so that they can call attention to these issues to their own local union leadership and demand answers, so that they can insist that their local union leadership demand answers from the person above them.

And only through this type of network, as I view it after all of my experiences, do I think it's possible to bring about any effective change in the democratic principles in building trades unions. Filing law suits has done some good, brought about some changes in the IBEW constitution, and in some other constitutions, but these things are too slow-moving and do not always deal with the real problems that we're after.

Our own organization would sooner spend a million dollars defending some undemocratic principle than to cave in on some law suit by members who have a justifiable position to maintain. When it finally becomes apparent that the international can't win the case, they'll settle out of court. Again, that's only an example in my organization, but it would fit appropriately in all the other organizations.

One of the things that I think must happen before we can bring about any change is to get a secret ballot election in the IBEW, and I hope in every other union. We can only do this through communication with, and education of, the rank-and-file membership to bring pressure from the bottom up. All the other speakers have said the same thing, it's only through that method that we can make the leadership responsive, and make them justify their positions during the time that they're in office. But they must stand an election. They must stand a realistic election where they must justify their positions or get bootied out. The only way that will ever become possible is to have a secret ballot election. No matter how strong any dissenters tell you they are, I've seen them all wither at conventions when they have to stand up and be counted in an open ballot.

If we ever hope to bring about democracy in our union, we're going to have to do the network thing. It's the only thing that I think will work. I've tried everything else, and I'm not one of the guys that intends to give up, I'm just trying to be effective. Through a process of elimination we have to weed out the things that don't work and get back to basics, get back to organization. That's the way unions commence. That's the way unions are supposed to continue. Unfortunately we're sometimes in a position of having to organize to compel our own organization to do the proper things.

I dug out my old copy of Alinsky's "Reveille for Radicals" which I reread about every four years, whenever I start getting down in the mouth. I want to quote something that Alinsky wrote years ago, "There can be no democracy unless it is a dynamic democracy. When our people cease to participate, to

have a place in the sun, then all of us will wither in the darkness of decadence, all of us will become mute, demoralized, and lost souls."

Another thing I borrowed from my old trusted copy of the Alinsky book was a little preface at the beginning, a quotation from Thomas Paine. And I'll leave you with this.

Thomas Paine wrote, "Let them call me rebel, and welcome. I feel no concern from it. But I should suffer the misery of devils were I to make a whore of myself." And with that, I'll leave you.

Speaker from floor: Brother Delgado mentioned something that is very intriguing to me. How in the world did you get petitions from 172 locals before that convention? That's an example of union democracy that is not evident in my union. I'm a plumber. And I'd like to know some of the mechanics of that.

Response by Charles Delgado:

First of all, we merely put together a fact sheet about the roll call election. We had all this printed up, we used our campaign funds to do it, and mailed it out to every local union addressed to the *local recording secretary*. The average local mailing goes to the business manager of the local union. If he does not happen to favor you, the letter doesn't get to the membership. So we mailed it out to the local recording secretary. Our International Office publishes what we refer to as a directory. It contains the name and the address of the business manager of every local and the recording secretary. In some of the industrial unions of the IBEW, it would be the president. We mailed this out to about 1500 local unions, and there were about 3000 copies of the petition. We received back let's say about 172. When I went to Washington with the petitions, I had 172 petitions. And more came in after I left. They were a substantial part of the IBEW establishment.

Let me give you an example of what they're going to combat you with. In one of the vice-presidential districts, which contains five or six or seven states, the vice-president sent all his representatives to personally call on every local union to get the business manager of that local union not only to sign the petition but also to send him a letter, addressed to the president, saying that he didn't sign the petition. That's intimidation in its rawest form.

I have to say in the face of that, that we still got back 172 petitions in time for me to take to Washington. I was able to present these personally to the executive council. I was ready to appear at the council meeting to make an oral presentation. In anticipation, I had prepared a presentation of the pros and cons. I stayed in the hotel room in Washington for two or three days while they decided whether or not they would hear me. And they finally told me they would not hear me. That was the end of it.

Views of a working electrician

By Forrest Darby

I find it inspiring to speak before so many unionists who believe that the key to a strong labor movement is an active, uncowed and enthusiastic membership. Members can feel excited about their union only if they feel their individual suggestions and questions are taken seriously.

I have been a business agent for IBEW Local 1547. I've been an organizer, a recording secretary, and I have attended the last two IBEW international conventions. I know a little bit about how my union works; and because I know how it works, I hope that we can change it.

We were asked to talk about the problems of construction workers. Construction workers face the same problems most other people face. They want to live peacefully and prosperously, but this is difficult in today's environment.

To start with, there are not enough jobs to go around, and when a construction worker gets a job, it may not last very long. So the problem a construction worker faces is to receive adequate compensation while he's working and to have a fair chance to work on existing projects. An honest union is the best way to pursue these goals. The problem is that no union is completely honest, and some are totally corrupt. This is why the Association for Union Democracy is one of the most important groups in the labor movement. The question is, "How should union members, in general, and the AUD, in particular, try to rectify the problems within organized labor?"

In my opinion, one way we can promote union democracy is to raise the awareness of lawmakers and political candidates. AUD and its members should send letters and questionnaires to people running for office and ask them if they support specific amendments to the Taft-Hartley and Landrum-Griffin Acts. Without a strengthening of these acts, we are going to stay on the same treadmill for many years to come. We should start with presidential candidates and work down from there. Currently there is not a *single member* of the House or Senate who is a vigorous champion of union democracy. So, our job should be to seek out and support candidates who believe in our cause—*regardless of how they stand on other issues*.

If the following recommendations were instituted, unions and union members would be far better off.

1. All union officers should be elected by secret ballot.
2. Members should have the right to ratify or reject proposed collective bargaining agreements under which they are asked to work.
3. No candidate for union office should be required to disclose which union members contributed to his campaign.
4. No union should be allowed to charge over 3 cents per envelope to address a candidate's campaign material.
5. Elected local officers should be allowed to finish their term of office free of intimidation. (This would mean that if you were not convicted of a felony or if the international office could not get a court order to remove you, then the properly elected local union officer could fulfill his or her term free of pressure from the international president.)

These are some of the changes that need to be made. Others are: opening up the union newspaper to opposing views, and amending §401 (h) of the Labor-Management Reporting and Disclosure Act so that the membership can more easily remove corrupt union officers.

In 1978, prior to the IBEW convention in Atlantic City, two friends of mine decided to run for international vice president and international executive council. They sent their campaign material to President Pillard and asked him to have the international secretary address their envelopes to the elected delegates from their districts. At first Pillard refused. He implied that §401 (c) of the LMRDA did not apply at the international level. When he was informed otherwise he agreed to address the campaign envelopes but charged the candidates over \$2.00 per envelope for this service. (By contrast, my local charges less than 3 cents per envelope for the same service.) If loopholes in the Act are not closed, unscrupulous demagogues will continue to shaft anyone who has the temerity to run against them or their cronies.

A few years ago four other IBEW members and I fought for the right to ratify or reject proposed collective bargaining agreements under which we were asked to work. We finally lost our battle at the Ninth Circuit Court of Appeals in San Francisco. We lost for a number of reasons, an incredibly obtuse or prejudiced district court judge and massive falsification by the international being the most important. However, there were some interesting legal points discussed in the case. The district judge ruled that §301 of the Labor-Management Relations Act (Taft-Hartley) did not cover a violation of a union constitution by union officers. We argued that the constitution was a contract between all members of the union and was therefore covered by §301.

The judge informed us that we were misinterpreting the statute. After the judge was upheld by the Court of Appeals and the Supreme Court refused to grant certiorari, I forgot about the issue—until an attorney showed me a similar case. This new case took place in Louisiana and was a carbon copy of our case, except the Louisiana lawsuit came two years after ours. Citing *Stelling* (our case), the judge ruled that the mem-

bers of the Operating Engineers had no standing to sue because §301 of Taft-Hartley did not cover a violation of the union constitution.

This new slap at the rights of members motivated me to write a letter to the Louisiana judge. I sent copies of the letter to every judge who had interpreted §301 in a similar fashion. I also sent a copy to Justice Brennan on the Supreme Court. In the letter I explained, in detail, how this section of the law was being misinterpreted. What I didn't know was that the Supreme Court was considering a similar case at the time Justice Brennan received my letter. Whether by coincidence or not, the Supreme Court overturned seven years of lower court misinterpretations of §301. In *United Association v. Local 334*, Justice Brennan wrote that the union constitution was a contract under §301 of the Labor-Management Relations Act. Some of the language in his opinion was indistinguishable from my letter. I believe that writing well-researched letters to judges and legislators is one of the most important things an individual union member can do to cleanse and strengthen his union.

I doubt that in the last forty years there has been a single statement made in support of union democracy that has received the blessing of international union officials. Because of this, anyone publicly active in union reform will find himself or herself vilified and slandered in ways they never dreamed possible. Glynn Ross of Phoenix, Arizona is the prime example of this type of treatment.

The average union member does not know the history of his union, understand the intricacies of union rules, or appreciate the laws governing his union. Yet he is capable of leading a popular rebellion of the members. In rare cases he may be partially successful. But in most cases he will end up a burned-out hulk of his former self. Burned out but much wiser—and a candidate for membership in AUD.

Once a person has been battered and disillusioned by his international leadership, and their fellow travelers, he may not feel like leading any marches, but he should have the proper motivation and education to start writing the kinds of letters that may truly help his union brothers and sisters. Over the years I have written a number of letters to judges and lawmakers. So far my letters to legislators have had only a modest effect, but the ones to judges I believe have helped the cause of union democracy. I encourage others to do the same.

I'm delighted that Brother Delgado attended this conference. I truly believe that if there was a secret ballot, he would now be president of the IBEW. But there wasn't a secret ballot, and the membership lost an opportunity for vigorous honest leadership.

A carpenters story

By John R. Brown

I was interested in the discussion about your rights in investigating dispatching procedures, because I was just notified yesterday in the mail that I'm being brought up on charges for the fourth time in about the last six or eight years—this time for doing exactly what Will Schmedel says we're allowed to do.

These charges involve a situation where we suspected favoritism in dispatching on a particular job, and a couple of other brothers and myself looked into it. Sure enough, yesterday, here come the charges against me and one of the others. I found this particularly interesting on the eve of this conference on union democracy.

Completely aside from the personal aspect of it, almost every single time that these kinds of charges have been filed against me, and against other people, it's been an attempt to prevent involvement of the union membership in dealing with problems that the union is facing. And it doesn't matter if these problems are as straightforward as dispatching procedure or a question of how the contractor is dealt with, or any other issue all the way up to the general social role that unions play in this country.

It seems to me that the essence of union democracy is the question of membership involvement in dealing with every single issue that the unions face. As far as I'm concerned, there can be no real understanding of the question of union democracy without an understanding of the position that the unions are facing here today, the building trades unions in particular, or in my own case, the Carpenters' union.

In the last fifteen years the building trades unions have been subjected to the most intense, systematic, vicious, and in many ways successful, union-busting drive that we have seen in many years—I would say since the days of the American plan shortly after World War I. To give you just one set of statistics: in the decade of the nineteen-seventies, it's been estimated that the building trades unions' share of the construction dollar declined from eighty per cent to forty per cent; and since then there is evidence that it's gone down to thirty-five percent.

We see this graphically in our own area. Across the bay in San Francisco, a twenty-million dollar job is going non-union. This would have been unheard of just a few years ago. In my own area, right across the street from my union hall, there's a five-million dollar job, funded by bonds from the City of Oakland, going non-union. Days Inn, some of you may have heard of them. They're kind of like the Joseph Coors of the motel industry.

Now, what strategy has our union leadership brought to bear in the face of this union-busting drive? From the very top, from Robert Georgine's office in the Building Trades Department of the AFL-CIO all the way on down, the general offices of our union, district, state council—all the way down to the local level, the strategy of our union is that we must allow union contractors to become "competitive" with the non-union contractors.

That means we have to compete with the non-union building trades workers for who can sell their labor power the cheapest to the contractors. That means in practice we're going to have to cut back our wages and conditions. We're not going to have a vigorous enforcement policy of our contracts. I'm sure any one of you building trades workers, whatever union you're in, have seen cutbacks in your union in wages and working conditions over the years.

The other side of that policy is a concerted attempt to remove the control of the union from the union membership. And of course that's very clearly necessary when you accept that kind of strategy, because, quite obviously, the membership of the union is not going to sit still very long when they see the union leadership opening up the store and giving away everything that they've fought for and won over the years.

Here we get back to the essential question of union democracy. Not so long ago in a publication put out by our general office, our full-time officers were told they were going to have to make unpopular decisions whether they were elected or appointed to office. As they put it, "Lead you must and lead you shall." Lead in what direction? was the question. What they meant, reading between the lines was, "Lead in the direction of giving away what we've built up."

Quite naturally that leads on the part of the membership to a general feeling of demoralization, in fact, almost disgust with the union. When they see that time and time again, it's practically impossible to get a really close bond in the working relationship between the rank-and-file members and the full-time officers, they begin to feel that this is not their union. And so, many times you can have, on the face of it, a formally democratic fairly won election; and on the face of it, a formally democratic, fairly won referendum vote on a contract, and democratic union meetings and the like. But if over the years you've built up this feeling of isolation, this feeling of separation between the membership and the structure of the union, when it comes down once every three years to having a union election that doesn't mean a hell of a lot. And so, the general policy and the direction of the union is directly tied in with the question of union democracy.

Now, this goes even more so when you consider the political strategy of the building trades and organized labor in general. The building trades are probably some of the worst. My own union at our last general convention, at the height of President Reagan's successful attempt to bust the air traffic controllers' union, who was invited as the chief guest speaker

to our general convention? Ronald Reagan! An attempt was being made to organize a convention walkout—and there was strong sentiment for that in the Bay Area and in California. When Reagan appeared, the top officers had a special meeting in which they got three or four of the big guns to stand up and explain why we couldn't walk out. There was no forum allowed, no mechanism allowed, where people could get up and explain why they thought we should walk out. Those of us who favored a walkout to protest Reagan's presence were left feeling completely isolated. The movement for a walkout collapsed. Again you see the direct ties between the policies of the union and the question of union democracy.

When was the last time any one of us was polled on whether or not we favored the development of nuclear energy over solar energy? When was the last time any of us was polled on whether or not we favored support for a reactionary, anti-labor government like in El Salvador? Or, just simply at the local level, all these little secret, backroom, sweetheart deals that our union leadership makes as part and parcel of their strategy of being tied to the coattails of the Democratic party. When was the last time we were ever even informed of any of these questions? It is obvious that if you're not informed, if your opinions cannot be expressed, there's no way to run the program democratically.

In conclusion, I'd just like to make the following points: that there can be no serious membership participation, which is the basis of union democracy, without a real dissemination of information to the membership. A real serious effort to build up a thoroughgoing understanding within the ranks of organized labor of just what we're facing today.

The union-busting drive that we see throughout this nation in all sections of organized labor—this isn't something that's just occurring by accident. There has to be a real serious understanding within our ranks of just exactly where this drive is coming from, what's the basis of it, and where it's going to lead.

On the basis of that understanding, it will be possible and it will be inevitable to build the kind of determined struggle which can put a stop to the union busting, to the anti-labor policies that exist in this country. I say it will be possible then for union members through their own direct participation to put to right what's wrong with our unions and with America.

Speaker from the floor:

Our Carpenter brother, John Reimann, referred to the issue of fair dispatching. Dispatching is the key, it is the linchpin. It's what underlies all the other issues.

I don't think there's anything peculiar about construction workers. They're like all other people, governed by self-interest, and if fear is going to keep them from acting, because they're going to be discriminated against in the dispatching system, none of those other grand objectives, glorious as they may be, are ever going to be achieved.

We're here to help ourselves, and we have to recognize the importance of fair job-referral. There is nothing more important if you're ever going to get the communication that you want, the backing of the rank and file, until people are free to act without fear of discrimination.

I'm a carpenter from the state of Washington, and I'd like to talk about an agreement. I don't know how many of you are familiar with it. It's called the Impasse Bargaining Agreement; and it's been signed by all the international presidents and the national Associated Builders and Contractors.

I'll tell you a little story about how we were introduced to it up in the State of Washington. In 1981 contract negotiations, the employers for the first time went to the bargaining table against a group of union representatives who were completely out of touch with their membership and who refused at that time to consult legal counsel in the process of contract negotiations, saying, "We go into negotiating agreements with the employer directly. We don't need an attorney." The employers came in with an attorney, and he ran right over them.

The membership, by and large, refused to take these concessions that were being made. The proposed concessions included legitimizing the "two-gate" system, which requires the union to use its "best efforts" to instruct its members to go to work through the so-called neutral gate in the event of a dispute on the job. They proposed to take away our overtime and other key benefits that had been hard-fought for.

And the membership absolutely got their backs up; they were not going to have this contract shoved down their throats. And so the negotiating committee took the option of coming to the membership and saying, "There is this agreement called the Impasse Bargaining which says that if a local strike is imminent that the union and the employer both agree to submit the situation to Impasse Bargaining which is where the International and national ABC come in and set your agreement for you."

We were brought into a meeting where for the third time the same contract was proposed to the membership, and it was clear what the attitude of the membership was toward the contract. Then we were presented with a ballot to vote on. And it said, "Yes, I accept this agreement" or "No, I reject this agreement, and propose that this be put into Impasse Bargaining by the International." We call it the "Yes-yes ballot."

And, unfortunately at that time, we had not seen a copy of the Impasse Bargaining Agreement and did not know what it meant. The Negotiating Committee had it, but they refused to allow us to examine it prior to the vote being taken. In Seattle where there was quite a bit of hubbub about this, let me tell you, they actually picked us up and threw us out of the meeting. When we demanded that either we be allowed to see the agreement or a new ballot be drafted so that we could vote the contract down and then take up the issue of Impasse Bargaining as a separate issue.

I hear from other people around the country in a variety of trades that Impasse Bargaining is being put up as a specter—



"I WAS A TOP CRAFTSMAN... ROSE THROUGH THE RANKS... WAS ELECTED LOCAL BUSINESS MANAGER... ALL WENT WELL UNTIL I TRIED TO DEFEND OUR MEMBERS AGAINST A WAGE-CUTTING NATIONAL AGREEMENT..."

and you know we all worry about it—you still have the right to vote on the agreement but the International is going to come in and impose it on you no matter how you vote. Let me just tell you, for your information, Impasse Bargaining is a voluntary agreement—just like a strike is a voluntary economic action that members take as a part of the collective bargaining process. Do not allow them to tell you that it is mandatory. Do not allow them to put a ballot in front of you that says "Yes" or "Yes."

Last week at the Washington State Council of Carpenters, we successfully led a move to stop them from sneaking in Impasse Bargaining: in future contract negotiations, Impasse Bargaining will not be put on the ballot as an option to a strike. In other words, it's a voluntary agreement which can be entered into by the membership only if they really feel that it is in their best interest—and I think we know how most of our membership sees this kind of situation. But I believe that in the current climate of concessions, we're going to see a lot of attempts to try to snow people with this agreement. It affects workers in Canada and the United States. It's signed by thirteen building trades international presidents and the national ABC and a couple of other specialty contractor associations. Be very careful as you approach this agreement, get a copy of it, explain it to your members. There's nothing the matter with talking about it. Be sure it's put up to a vote.

A reserve army against corruption

The following is based upon testimony on September 14, 1982 by Herman Benson, AUD executive director, at hearings on corruption in the construction industry before the New York State Commission on Investigations.

When the New York State Commission on Investigations uncovers the most recent outcroppings of corruption in the construction industry, it will have rediscovered the wheel. The pattern, which comes down from primordial times, brought together fast-buck contractors, union officials on the take, and cooperating public officials and has persisted chronically through the years. In these days of changing mores and vanishing values, racketeering in construction remains one of the reliable old-fashioned ways.

The record of how it started and how it evolved is there in *Labor Czar*, the book which Harold Seidman wrote in 1938. In case we forget, the *New York Times* reminds us, at least every ten years in a special series, that corruption in New York construction is rampant.

When one malefactor goes to jail, the empty spot is filled by father, mother, sister, or twin brother and all goes on as before, without even an interruption. Monkey business as usual. None of the law enforcement agencies or governmental authorities has succeeded in denting construction corruption, and that surprises no one. The war against drug traffic, loan-sharking, commercial prostitution, illegal gambling, etc., etc., etc., have all failed. Can we hope for anything better in construction?

Yes. Because in construction, as in other unionized industries, there is an army awaiting the sound of the trumpet: the organized workers, the union members whose living and quality of life depend upon the state of the industry. The point is to encourage them, to assist them, and above all to protect them with all the influence of public opinion and government power.

I realize that this idea contradicts the widespread myth that construction workers somehow share the proceeds of corruption and don't give a damn whether union officials get theirs

so long as they (the workers) also get theirs. I once believed that myth, but no more. I learned the facts of life in twenty-four years of experience, beginning in 1959 when, with the help of Norman Thomas, I published *Union Democracy in Action* to report the efforts of union reformers for decency and democracy. Then, I worked closely with Frank Schonfeld who, in 1960, was a rank-and-file painter fighting corruption in the Painters union in New York City. From 1967 to 1973 when Schonfeld was secretary-treasurer of the union, I edited its paper and served as his aide, until he was brought down by a combination of employers, business agents, Painters international officials, and Carpenters and Teamsters officials. Since 1972, I have been executive director of the Association for Union Democracy, a civil liberties organization which defends the rights of members in their unions.

In all this time, I have dealt with hundreds of construction workers all over the country in many different international unions. My conclusions are based upon their stories and my own experience.

The tone of labor relations in the corrupted sector of the construction industry is set by a distinctive relationship among consenting adults: the participating employer and the participating business agent. The employer takes good care of the business agent by hiring workers who go along with the BA and firing those who oppose the BA and by supplementing these favors with periodic cash gifts. It is not a wasted investment. In return, the BA overlooks contract violations, gives the employer free rein in handling the workforce, sometimes permits the use of nonunion labor, ignores employers' debts to the insurance funds, permits unionists to work "off the books" at straight time for overtime, or without social security benefits or union fringes. The BA makes a nice buck and consolidates his political machine by passing out jobs and punishing foes. The employer cuts costs and often can outbid competitors.

I estimate that perhaps 5% of the union members identify with the official union machine. They come to all meetings, vote with the business agent, shout down critics, and do other dirty work. In return, they don't get rich; they get only a chance to work regularly, earn a decent living, eke out a measure of security in an uncertain industry. Their share is no more than what any self-respecting working person deserves, without selling out dignity to a bullying official.

The rest of the workforce, that 95% outside the official family, scrounge constantly for work. One construction project ends, and they search for another. When times are good they work regularly. When times are bad they live on the edge.

But all of them, the 5% as well as the 95%, suffer from the system. Unlike other industries, there is no real grievance procedure in construction, a fact which should amaze any

good union member. Workers who file grievances usually end their chances forever with that employer. Do it too often, and you may as well look for an alternative career or move to another city. They all suffer from unsafe working conditions and keep their mouths shut; they see their trade agreement violated and turn their eyes. Sometimes when they apply for pensions, they discover that their benefits are sharply reduced or even denied, because years ago some employers were permitted to chisel on fund payments. It is not only the public, and not mainly the public, which suffers from the overhead costs of corruption, but the workers as well. The public loses mostly money, the worker can lose a life from unsafe working conditions.

That's why, despite all the risks, there are construction workers who stand up against corruption. I know about Frank Schonfeld's twenty-year crusade for decency in the painting industry and about the two painter reformers on the west coast who discovered that their insurance funds were being pilfered and who were murdered in 1966 by a top union official and two employers. In the early sixties, I met a group of carpenters from Suffolk County who were opposing their union officials. They told me about Ed Murtha, an honest leader of their union who, they said, was opposing racketeers and was murdered in 1956; and they explained how they were blacklisted and were repeatedly reminded of Murtha's fate. In 1975, Willie Nordstrum, a young carpenter from the Bronx, came to our office for advice on how to assure a fair election in his campaign against the incumbents in his local. He won the top job and was murdered a short time later.

One of his colleagues came to complain that nothing was being done to find the murderers; at least that's what he thought.

Union reformers in construction are convinced that while they fight on against terrible odds, almost no one in public office seems to care or offers to help. I share that view. They face blacklisting, suspensions and fines in their unions, sometimes even murder. Despite all the laws already on the books, their rights are not protected. Until there is effective public support for the union reformer, investigations will come, investigations will go and not much will change.

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No. 79

Published by the Association for Union Democracy

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IBEW admits: "Mismanagement" of union hiring halls is "common"

Challenging IBEW election rules

Three members of the International Brotherhood of Electrical Workers filed suit in District of Columbia federal court on August 30 asking the judge to enjoin enforcement of international union election rules which, they charge, violate the free speech provisions of the Labor Management Reporting and Disclosure Act by drastically limiting the right to run for local union office and rendering supporters of insurgent candidates vulnerable to discrimination and retaliation.

Back in 1982, the IBEW amended its constitution and adopted rules which forbid candidates for local union office from accepting campaign contributions from anyone not a member of that local. The ban closes off contributions not only from those who are not members of the IBEW but even from members of other locals and from IBEW retirees. The rules also impose strict reporting requirements: Any candidate who spends more than \$100 must file regular reports and list the names of every person who donates more than \$10. Unpaid volunteers are permitted to donate personal services, but their names and their employers must be reported. These mandatory disclosure documents are available for inspection by rival candidates for the same office, in effect making them public documents.

In 1988, running for IBEW Local 11 executive board on the TEAM ticket, an opposition slate, Louis Izykowski spent \$142.50 to mail campaign literature. When he failed to file reports and list his contributors, he was brought up on charges in the union. In August 1989, he was found guilty and barred from running in local union elections until he files the required reports.

These events led to the suit by the three electricians: Izykowski, himself; Forrest Darby, member of Local 1547; and Rhys Jones, a retired member of Local 11. They are rep-

continued on page 5

Up to now, it was only a hotly denied rumor and a closely guarded secret shared only by perhaps a million construction workers; but now it has leaked out so that the whole world can know. Thanks to an official spokesman for the International Brotherhood of Electrical Workers we are informed that the "mismanagement" of union-run hiring halls in the construction industry is "common."

This revelation of the obvious came from Laurence Cohen, IBEW counsel, in proceedings before the U.S. Labor Department. It was back in 1986, but the documents, including portions of a hearing transcript, have just come to our attention. Here is how Mr. Cohen put it to a DOL administrative law judge on November 6, 1986:

"It is—I would go so far as to say an unfortunate condition of the building and construction industry, which is always a chaotic one, with jobs of short durations and transient employment of people traveling to find work and so on, there are hundreds of allegations of hiring hall misuse brought to the Board every year. Frequently, dozens of findings of hiring hall mismanagement by the Board each year. If that, alone, constituted serious misconduct, the Department of Labor, and ultimately the court, would be doing nothing else other than running around the country trying to remove construction industry business managers in all crafts from office. I guess my basic point is that it is a common occurrence."

At that point Mr. Cohen seems to have been speaking off the cuff or from notes. Perhaps, one might think, he stumbled and didn't really mean to say what he did. Here, then, is an extract from the union's written brief in words which the authors could weigh carefully, avoid misunderstanding, and present facts accurately—or at least to their own satisfaction:

"... NLRB cases involving hiring hall violations are a common occurrence in the construction industry. Administering a hiring hall in an industry marked by transient labor and jobs of short duration is not easy under the best of circum-

continued on page 4

Teamsters, judge, and court officers move for a fair election

by Selma Marks

It is increasingly likely that Teamsters will be able to choose the officers of their union after a fair election and an honest count. Judge David Edelstein has thoroughly rebuffed every attempt by the union officials to undermine the consent decree: he has ordered complete supervision of the casting and counting of ballots at every site. Election Officer Michael Holland moves effectively to carry out that order. Investigation Officer Charles Carberry brings charges against corrupt officials all over the country. Independent Administrator, Frederick B. Lacey, as trial judge, forces suspect individuals out of one local after another.

If the old gang hoped that they could somehow outmaneuver the judge and manipulate the election process this time as always before, that hope is gone. The union regime now faces an unprecedented problem. This time no tiny cabal, with organized crime behind the scenes, can dictate the choice of candidates and officers. This time the membership will decide by direct membership vote, and that fact dominates all else.

The officials must find candidates who are acceptable, not just to the mob, but to the membership, for them a novel task. Candidates begin to come forward boldly, knowing that they no longer need the nod of the top brass but only the support of the rank and file.

Everything is changing: the rules, the atmosphere, the position. This information explains why there are so many innovations and recombinations among the old

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Levy Affidavit
Exhibit H

Hiring halls: continued

stances. . . . Indeed, the volumes of reported Board cases are replete with decisions finding unions in violation of the National Labor Relations Act because of their administration of their hiring hall procedures. But, does each one of those warrant the removal of the union officials involved? We respectfully suggest that to ask the question is to answer it. If the answer were in the affirmative, officials of the Department of Labor would be doing little else other than racing from one union office to another in such industries as construction, shipping, trucking, etc., in order to remove union officials. Even if they had the authority to do so . . . they would have little time to enforce other provisions of the Act. For the above reasons, the ALJ [administrative law judge] should hold that the allegations of hiring hall misconduct are not allegations of 'serious misconduct'."

(Reading this, one forgets that IBEW members were asking for the right, not of the Labor Department, but of the membership to remove errant officials.)

These revelations of hiring hall abuse (not surprising to those who knew) were not embarrassed admissions extracted from reluctant IBEW officials by hostile interrogators. Not at

Unfortunately we now face what I choose to call the "insider rule." In the Steelworkers, it's been referred to as the outsider rule; but in the IBEW it's the insider rule. The new restrictions on raising funds to mount a campaign against international officers will prevent anyone from ever doing what I attempted to do unless that rule is repealed. I was trying to get a message across to a million members, but trying to get a message even to three thousand delegates is just an impossible chore, a terrible chore. There's no way that anyone will be able to mount an effective campaign, without any money, against the international officers. And it's unreasonable to think that you can put together any amount of campaign funds under the rule that the IBEW has adopted where no IBEW members can contribute more than \$10 without having his name, rank, and serial number sent to the president of the IBEW. So that's just out of the question from now on. I operated my total campaign on contributions from members of the IBEW, from all branches of the IBEW; and none of the names were ever reported. If I had to report the names of all the people who contributed money in my last campaign, I'd hesitate to say what would happen to a lot of them.

Comments by Charles Delgado at AUD conference in Berkeley, 1983.

all. The comments were firm, insistent, voluntary declarations, as though to say: this is how it always has been and how it will remain. And, by some strange torturing of reason, the IBEW insists that the "mismanagement" is not a serious offense precisely because it is so widespread.

What is trivial to one can be deadly serious to another. For construction workers whose livelihood—and whose right to dignity on the job—depends upon hiring halls, mismanagement is a prevailing, widespread evil that cries out for correction. But for arbitrary union officials, the right to manage or mismanage hiring halls gives them the power to manage or mismanage union locals as they see fit. For them, the current system is not "serious," it is a welcome opportunity. It insulates them from membership control and puts the rank and file at their mercy.

How did the IBEW come to put the facts on the table? That makes a curious story:

The IBEW constitution provides no mechanism for the

removal of any officer, local or international, by the rank and file membership. The practice is simply not permitted. Members can elect their local officers but cannot remove them, even if they are guilty of offenses. Charges against any local officers, including business manager, can be presented only to an international vice president who acts as judge, usually appoints an assistant as jury, and imposes penalties. The local or its membership has nothing to do with the process. The system is perfect for keeping the disciplinary whip in the hands of a small international officialdom. The whole cadre of thousands of local officers are protected from their membership but rendered totally dependent upon the international administration. Apart from any possible moral defect, the system has one serious flaw: it seems to violate federal law.

LMRDA section 401(h) requires "an adequate procedure for the removal of an elected officer guilty of serious misconduct." The problem is that enforcement requires 1. a complaint by "any member of a local labor organization" to the Labor Department, and 2. enforcement by the Labor Department. The double weakness here is 1. that construction workers who complain may find that their hiring halls are so "mismanaged" that the complainants are blacklisted; and 2. that the Labor Department moves with the alacrity of a tired, heavy tortoise.

While the Labor Department has adopted 20 detailed paragraphs of regulations describing how provision 401(h) might someday be enforced, after 31 years it never has actually been enforced. And so it might have remained for another 31 years if not for a band of fine electricians, members of IBEW Local 212 in Cincinnati. It took them five years, but Joe Small and Donald Hurst, Local 212 members, finally got the Labor Department to do something about 401(h).

Their efforts began in 1985 when they tried to remove their local business manager, charging among other things that he had abused the hiring hall procedures. Then, finding their way blocked by the IBEW constitution, they complained to the Labor Department under section 401(h). Their complaint ricocheted for years around the Department until April this year when Mary Sterling, assistant secretary of labor, upheld their complaint.

In the course of hearings before the administrative law judge, the IBEW tried various ploys, all unsuccessful: They argued that the union's existing procedures were lawful; they claimed that the Small-Hurst complaint was moot because the offending business manager was out of office. And, finally, they tried what must have been a desperate gambit: they conceded hiring hall "mismanagement" but argued that it was not the kind of "serious offense" covered by law. Why not serious? Because—their incredible argument goes—it is so common!

Call it mismanagement like the IBEW. Or, call it blacklisting, discrimination, and intimidation. Either way, the certainty is that it is widespread in construction. ■

Postscript: The case continues. Not yet a happy ending. After all, the law has been on the books only for 31 years; and Small and Hurst have been at it for only five. They must now come up with proposed new bylaws and shepherd them through the next procedural stages.

IBEW delegate wants democracy talks

John Murphy was elected to represent IBEW Local 35 at the union's convention in St. Louis next year. He hopes to get together with other members and delegates to discuss how to strengthen democracy in the union. He can be reached at 227 Princeton St., Hartford, CT. 06106-4253.

Union Democracy

Union Democracy Review

No. 80

Published by the Association for Union Democracy

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U.S. judge rules: hiring hall blacklisting violates LMRDA

by Susan Jennik

Federal District Judge T. Emmett Clarie in Connecticut has ruled that LMRDA Title I protects unionists against blacklisting in their union hiring halls. A magistrate, who also took testimony, found that, in this case, the discrimination was part of a pattern of suppressing democratic rights in the union. This decision, the first of its kind, provides far more effective protection against hiring hall abuse than has been available in the courts up to now. By permitting victims to collect punitive damages and legal fees from the tormenting unions and officials, the decision strengthens the deterrent against the blacklisting of union dissenters, an evil which is especially rampant in the construction trades.

In this case, *Phelan v. Quinn* [H-85-1035(TEC) Dist. of CT], a trial jury awarded three plumbers: Shane Phelan, Don Fitzgerald, and Mark Cotton, over \$500,000 in damages plus legal fees for retaliation against them by Plumbers local union officers in Connecticut. The jury found that Plumbers Local 305; its business manager, Terrence Quinn; and his brother Patrick Quinn, business manager of Local 76, engaged in a scheme to suppress dissent within the union.

For many years, Local 305 had jurisdiction over the biggest construction job in Connecticut, at the Millstone nuclear power plants, which employed up to 1,500 plumbers. To get work at Millstone, plumbers had to be referred by Terrence Quinn. But the three plumbers were denied referrals because they had annoyed Terrence's brother, Patrick.

Phelan, a former Local 76 pension fund trustee, had opposed Patrick Quinn's support of a proposal to award a union pension to an employers representative. In 1982, with Phelan's support, Fitzgerald ran against Pat Quinn for business manager. Cotton led a successful campaign to organize his non-union shop into Local 76 and was soon fired by his employer. After Pat Quinn learned that Cotton was Fitz-

gerald's friend, Cotton got no more referrals to union plumbing jobs. All three "troublemakers" were denied referrals by Terrence Quinn to any Millstone jobs. In 1986, Fitzgerald recounted these events at AUD Citizen Hearings on Corruption and Union Democracy in the Construction Trades. (see UDR No. 52)

A lawsuit filed by the three in 1985 in federal court charged, among other things, that the retaliation in job referrals infringed their rights under the Labor Management Reporting and Disclosure Act (LMRDA). Similar issues were before the U.S. Supreme Court last year when it heard the case of *Breininger v. Sheet Metal Workers Local 6*. Like the three plumbers, sheet metal worker Breininger charged that he had been refused referrals from the union hiring hall. The Court did rule that he could bring a duty of fair representation charge against the local under the National Labor Relations Act; but that was all. The court would not consider his free speech claim under Title I.

In an amicus brief in support of Breininger, AUD argued that hiring hall discrimination in this case violated the section of Title I which protects free speech; but the Court refused to rule on that contention because the issue had not been raised earlier in the lower courts. In a footnote, the Court left the question open. In Hartford federal court, the district judge agreed with Leon Rosenblatt, attorney for the three plumbers, that the discrimination did indeed violate Title I.

In duty of fair representation cases under the NLRA, victimized unionists can only win reimbursement of wages actually lost during the period when they were barred from work. Punitive damages are not available, so that the deterrent effect, even when victims win their cases, is quite limited. The latest Hartford ruling points to a more potent weapon against blacklisting.

Attorney Rosenblatt is an AUD advisor.

First stage in the Teamster elections

by Selma Marks

The first stage in the process of selecting new Teamsters international officers opened this fall with the election of delegates from 38 locals to the union's convention scheduled for June. The locals are mostly small, with no known record of internal reform activity, and they constitute only a tiny segment of the union's 650 locals. Most members and local officers still hesitate before making irrevocable commitments, because there has not yet been enough time for them to sort out the lines of demarcation among the contenders or to assess their strength. It is impossible at this point to judge the degree of membership support for sweeping change. International officers will be elected by direct national membership referendum in the fall of 1991.

What is already clear, and encouraging, is that the strong stand of federal Judge David Edelstein followed by the firm actions of the three court officers to carry out his mandate to supervise every phase of the election have created a new

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p. 8 AUD conference: union democracy's new stage

atmosphere in the union: in increasing numbers, members feel confident that if they do come forward as candidates or campaigners, their rights will be protected. Our own misgivings that the old officials might be permitted to steal the elections have been allayed. What shapes up is a genuinely democratic contest for top office. That alone, in this union, is already an astounding achievement.

Michael Holland, the election officer, has taken the administrative steps and issued the technical guidelines necessary to control elections in the locals. He has assembled a staff by regions which has begun to review and approve local election plans, supervise nomination and election meetings, and deal with election protests. Even the locals in Canada, which at

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

- - - - - x

MICHAEL QUIGLEY, et al., :

Plaintiffs, : NO. 07-600 (RBW)

vs. :

VINCENT J. GIBLIN, et al., :

Defendants. : PAGES 1 - 71

- - - - - x

May 18, 2007

Washington, D.C.

Deposition of DON CHISM, held at the
offices of Public Citizen Litigation Group, 1600 20th
Street, N.W., Washington, D.C., commencing at 10:10
a.m., Thursday, May 18, 2007, before Elizabeth
Mingione, Notary Public.

1 in?

2 A. I think it's Arlington County.

3 Q. A state court proceeding?

4 A. State of Virginia. Yes.

5 Q. Have you ever been convicted of any
6 criminal offenses?

7 A. No.

8 Q. Are you currently employed?

9 A. Yes, I am.

10 Q. How are you employed?

11 A. I am the IT Director for International
12 Union of Operating Engineers.

13 Q. How would you describe your duties as IT
14 Director?

15 A. My duties are to maintain the IT
16 infrastructure for the headquarters of the
17 International.

18 Q. Do those duties extend to the operation of
19 the web site in any way?

20 A. Somewhat.

21 Q. In what respect?

22 A. We work with the company that maintains the

1 involved in?

2 MR. LEVY: In the technical aspects of the
3 contracts to date?

4 MR. CLASH-DREXLER: Are you talking about
5 the contracts that are referred to in the --

6 BY MR. LEVY:

7 Q. Discussed in the affidavit.

8 A. Yes.

9 Q. Has any of that involvement involved things
10 you've done or said not in the presence of the lawyers
11 working on this case, either in-house or out-of-house?

12 A. No.

13 Q. One of the contracts involves a firm being
14 retained to provide remote authentication; correct?

15 A. Yes.

16 Q. Do you know what firm will be providing the
17 remote authentication?

18 A. Yes.

19 Q. What firm is that?

20 A. I think their name is the Matrix Group.

21 Q. And is that -- have you ever met Ms. Pineda
22 in person before?

1 Q. Has there been any discussion of whether
2 the would-be viewer would then get to go through to
3 the web site they were seeking?

4 A. No. I don't think we've discussed that
5 particular route.

6 Q. How would remote authentication work, to
7 your knowledge?

8 A. There are numerous ways that it could work
9 or that it could be set up.

10 Q. Have the scripts been written to your
11 knowledge for the remote authentication system?

12 A. I have not seen any. No.

13 Q. To your knowledge have those scripts, have
14 any scripts been tested?

15 A. No.

16 Q. Directing your attention to paragraph 7 of
17 your declaration, you speak of a contract provision
18 about not logging certain identifying data. Why is
19 that contract provision needed?

20 A. To ease the concerns of members that
21 their -- that what they are doing or where they are
22 going would be tracked.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Michael Quigley, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 07-600 (RBW)
)	
Vincent J. Giblin, <i>et al.</i> ,)	
)	
Defendants.)	

AFFIDAVIT OF MICHAEL QUIGLEY

1. My name is Michael Quigley. I am one of the plaintiffs in this action. I make this affidavit in support of our motion to bar the implementation of the rules and constitutional provision of the International Union of Operating Engineers ("IUOE") over which we have sued in this case.

2. I have been a member of the International Union of Operating Engineers since 1968. I was a heavy equipment operator until 1987, when I was appointed as a Business Representative for Operating Engineers Local 150. I served as a Business Representative until 1999, when I was appointed as Executive Director of the Indiana Illinois Iowa Foundation for Fair Contracting, a joint labor-management entity funded under Local 150 contracts which investigates prevailing wage projects. I served in that position until I retired in April 2006.

3. I am the webmaster for the web site 150election.com, which was created to support the campaign for the election of plaintiff Joseph Ward and his slate of candidates. I create and input the basic content and design for the web site, although we are lucky to have a volunteer retired member of our local who is a computer systems engineer, and who maintains and oversees the overall technical aspects of my designs so that they are in the right format for display on the Internet.

4. The requirement of password protection for campaign web sites will inevitably interfere with my right to communicate even with members of the union who have register numbers that they could enter as passwords because many members will be unwilling or unable to enter the register numbers at the time they might be looking at my web site. First of all, most register numbers are too long to be memorized – my number contains seven digits, and members who joined the union more recently have more digits in their numbers. Moreover, the occasions when members need to know their numbers are too infrequent to give them a reason or occasion for memorization. Moreover, although some members carry their membership cards in their wallets, many do not. Members are subject to being checked for membership at work, which was one of my responsibilities when I was a Business Representative, but in my experience members often did not carry their membership cards with them because they did not want them to get lost on the machines while they were operating. Members need their membership cards when they come to union meetings, but it is only a very small fraction of all members who come to meetings. So it is quite possible that a member might be online and have occasion to look at our web site and be unable to do so because he doesn't remember the number or have ready access to it. It is also possible that the union's records (and thus the membership card) could have bad information about the member's exact name, such as whether or not, since the time the member first joined the union, the member has decided to use, or not to use, a particular middle name or middle initial, or a nickname or a shortened version of a name (such as Don instead of Donald). In either case, unless the member had his card with him, getting into the web site or a candidate or a candidate's supporter would be especially unlikely.

5. Moreover, the union's databases do not contain members' membership numbers for new members until several months after they join the union, so the requirement of entering register

numbers will prevent me from speaking to new members entirely. This problem was brought forcefully to my attention when Local was running a database allowing employers to hire newly trained crane operators by using membership numbers. This approach had to be abandoned, switching to the use of social security numbers, because it was taking as long as nine months for the International to add numbers to the new members' records. The new member was processed by the local, and the paperwork then went to the International, which eventually responded to the local with a membership number.

6. Even members who have a membership number and have access to it are often going to be unwilling to enter it as a condition of viewing campaign web sites, including our campaign web site. This partly a matter of personal privacy; many members understand that their visits to and movement within the pages of a web site are automatically tracked and recorded on the server log. But the problem is compounded by members not wanting to take the risk that the incumbent union leadership might obtain this information and use it against them. Members are careful when dealing with union officials because they understand that officials can hurt their livelihood. In our local, as in other locals representing engineers in the construction industry, access to jobs is controlled by the union's hiring hall, which refers members to jobs. Members worry about whether an official will prevent them from getting a good job through the union's hiring hall when the current one runs out, and in the construction field most jobs are strictly temporary and lasts only so long as the current project.

7. When I was a business representative, I am proud to say that we never took advantage of our power at the hiring hall to discriminate against members based on that they said or did not say in internal union politics, but even back then most members treated union officials with extra respect

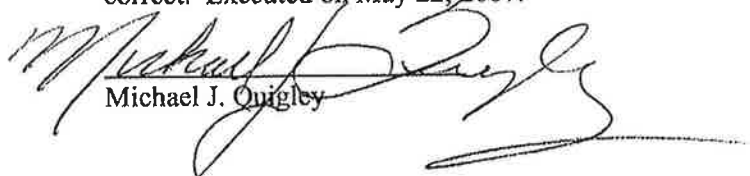
because they understood the power that those officials could have over their ability to earn their livelihood. And, in my opinion, more recently there has grown to be an atmosphere of fear and intimidation on job sites and within the union, and many members believe that opponents of the incumbents are not getting a fair shake at the union hiring hall. So that gives members in our local an additional reason not to allow their membership numbers to be recorded as having visited a web site on the “wrong” side of the election.

8. In some locals, there has been a history of violence against union dissenters, and that may provide an additional reason for members not to want to leave traces of their presence in the “wrong” web site by having to record their names and register numbers. Members in our area are aware of the problems in Local 18 in Ohio, and more recently the attack on Jim Archey at a meeting of Local 37 in Baltimore has become known to the membership. Happily, such violence has never been a problem in our local, although I am aware of a recent claim being made that a supporter of the incumbents was attacked.

9. As originally announced, the obligation to use passwords imposed an onerous burden on web site operators. After we received word that the International was going to punish candidates or supporters who operated campaign web sites without password protection as of April 15, we obtained counsel to challenge the rule. But we regard our web site as absolutely crucial to our campaign. In order to be sure that we would be able to keep our web site going in the event we were unable to get the rule set aside, we took steps to create a password protection system. We were lucky that our volunteer computer systems engineer had licensed copies of the SQL server software that was needed to implement these burdensome requirements. If we had had to buy new software, preparing for the change could easily have cost us between \$8000 and \$9000. And even then we are

24. Until relatively recently, I really had no idea about some of the things that are going on in our union, such as about some of the corruption or other problems. I credit the information that is available on the Internet for helping to open my eyes. For example, I have found very useful the web site of the Association for Union Democracy, which links to significant intra-union web sites, and web sites from members in other locals and indeed of locals in other unions than the IUOE. If the AUD can't look at our web site, they can't link to it and the word about our problems won't spread, and members in other areas won't be able to learn from us. Indeed, if the IUOE wins this case, other unions may want to shut me off from being able to see the web sites of their members. I think union members generally would be the poorer for that.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct. Executed on May 22, 2007.



Michael J. Quigley