

Retaliation for Internal Union Activity

You can sue your union in court under the LMRDA if you are being discriminated against in referrals because you are outspoken in your union. First, you should use any internal union grievance or appeal procedures available to you. Remember, though, that the best defense is a good offense: an organized rank and file that acts collectively stands a better chance of solving problems without having to use formal procedures and has a better chance of enforcing legal rights.

Construction Worker Rights in Hiring Halls

by William Schendel, Excerpted from Union Democracy in the Construction Trades, an AUD publication.

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 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 NLRA. 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. Sect. 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 the interpretations that flow from it. You have more than the right merely to inspect the contract; you have a right to obtain your own copy of the contract, including the dispatch rules, and any amendments to those rules
2. 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 officers cannot be arbitrary in how they run the union. The case in point is Operating Engineers Local 406.
3. 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.
4. 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).

5. 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 request; and c) the union can refuse to disclose "confidential" information. Names of registrants, their last place of work, and their dates signing the out-of-work register, are not confidential. *Culinary Local 165 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 dispatch, 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 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.

Travelers. The one group within 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*.