Labor Relations Bulletin
FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
June 11, 2025

Right to Reject: Union Hiring Hall Referrals

In the construction industry's hiring hall system, union halls refer available applicants to signatory contractors for employment. IBEW-NECA Category I language includes a clause commonly referred to as the "Right to Reject." This critical risk management tool ensures employers are not forced to hire an applicant for employment. However, this right exists within the framework of U.S. Federal labor law and exercising it improperly can trigger grievances or unfair labor practice charges.

Hiring Halls and the Legal Basis for the "Right to Reject"

Under the IBEW – NECA hiring hall arrangement, the union is the exclusive source of job referrals, but the employer is expressly allowed to reject any applicant referred by the union. Article IV, Section 4.03 of the IBEW-NECA Pattern Agreement Guide reads, "*The Employer shall have the right to reject any applicant for employment*." This safeguard preserves management's final say in hiring decisions when hiring collectively bargained individuals.

Federal labor law has long recognized this right to reject as a key condition for lawful hiring halls. In the landmark *Teamsters Local 357 v. NLRB* decision, the U.S. Supreme Court approved that an exclusive hiring hall arrangement is lawful provided they contain the following:

- Referrals must be made on a non-discriminatory basis, specifically, no basis for membership or non-membership within the union.
- The employer retains the right to refuse any union-referred applicant for employment.
- The hiring hall procedures must be transparent.

These conditions prevent a hiring hall from becoming an unlawful "closed shop". In other words, as long as the union refers workers neutrally and the employer remains free to make the final hiring decision, the NLRA does not consider the arrangement inherently discriminatory.

NLRA Limitations on the Right to Reject

While broad, the right to reject is not absolute. Section 8(a)(3) of the NLRA makes it an unfair labor practice for an employer to discriminate, "or discourage membership in any labor organization." This means an employer cannot reject a union referred applicant simply because that individual is a union member or engaged in union activity. A 1941 Supreme Court case, Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941) held that an employer violates the Act by refusing to hire applicants solely due to their union affiliation.

In practice, a contractor should never reject a referred electrician on grounds like "they're too active in the union" or "they're a union steward who gave us trouble". Those motives point directly to union-related discrimination and can trigger Section 8(a)(3) charges.

Similarly, an employer must not collude with a union to manipulate referrals in a discriminatory way. Section 8(b)(2) of the NLRA prohibits unions from causing an employer to discriminate in hiring for union-related reasons. Both the union and employer can be liable if they sidestep the normal referral rules to favor or disfavor certain members. A historical case involved an IBEW local that gave preference to its own members in referrals; the NLRB found the union had violated 8(b)(2), and critically, NECA was found to have violated 8(a)(3) by "giving effect" to that discriminatory referral system. In other words, if an employer only rejects referrals who lack union membership (or who are on a "no hire list" with the union) in order to hire someone more "connected", both parties would be engaging in an unfair labor practice. The right to reject cannot be used as a pretext to discriminate on the basis of union membership or protected concerted activities. NLRB v. Local 269, IBEW and NECA (1966).

Apart from NLRA considerations, employers should also remember that normal EEO laws apply. A union referral should not be rejected for reasons of race, sex, etc. The safest approach is to treat candidates the same as any other job applicant: assess their skills, experience, and work record against the job requirements.

There have been several other related cases regarding right to reject the Labor Relations team recommends NECA Chapters and NECA members familiarize themselves with: Mountain Pacific NLRB Case (1959); Parsons Electric Company NLRB Case (1992); and Kofoed vs Rosendin Electric (2001).

Best Practices for Exercising the Right to Reject

When declining to hire an individual sent over by the union hall, contractors should exercise this right carefully and document their actions. The following best practices can help employers manage referrals while avoiding unfair labor practice allegations:

- **Use Objective Job-Related Criteria**: Evaluate each referral on factors like qualifications, certifications, work history, and attitude.
- **Be Consistent**: Apply the same standards to all referred applicants. Avoid any pattern of rejecting individuals for certain reasons, including discriminatory ones.
- **Use a Uniform Response:** The Category 1 language does not require a reason be given when exercising the right to reject. Stating "We are exercising the right to reject" as the only response is the safest response.
- **Follow the Contractual Procedures**: Review your CBA for any required steps when rejecting a referral. Some CBAs may require payment for rejection or other contractual provision like stating a reason for rejection if questioned. These additions are not Category 1 language and would be bargained locally, nor advisable by the NECA Labor Relations department.
- **Communicate Professionally with the Local Union**: While there may be no obligation to provide a detailed explanation, being adversarial when an inquiry comes is not advisable.
- **Avoid Blanket or Arbitrary Blacklisting**: Using the right to reject should be on a case-by-case basis. It's acceptable to refuse to re-employ someone who was fired for cause, however, be cautious about any declaratory statements like how you will, "never hire Person X from the hall again".
- **Consult Experts When in Doubt**: If a particular referral situation is sensitive, consult your local NECA Chapter before rejecting. They can help evaluate the scenario to ensure you aren't exposing yourself.

By adhering to these practices, employers can confidently exercise their right to reject unsatisfactory referrals while remaining within the bounds of the law. With proper documentation, constancy, and awareness of legal limits, NECA contractors can utilize the right to reject as intended: to select the best people for the job and their company.