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ABSTRACT

With the current emphasis on opening employment opportunities in the construction industry to minority groups, attention has been focused on the industry's traditional hiring practices. This study has examined: (1) the extent of exclusive work referral systems in the construction industry, (2) the procedures for the operation of such systems as provided by key construction industry collective bargaining agreements on file with the Bureau of Labor Statistics, (3) the constitutions of construction industry unions, and (4) the legal status of work referral systems under Federal law. It was found that exclusive union work referral systems are legal provided they operate in a nondiscriminatory fashion. These systems are widely used in the construction industry, cover approximately 1 million workers, and the unions are almost solely responsible for their administration. More than half of the agreements provided a grievance procedure to settle disputes involving the work referral system. (Author/GEB)

Exclusive Union Work Referral Systems in the Building Trades

U.S. DEPARTMENT OF LABOR
Labor Management
Services Administration

EXCLUSIVE UNION WORK REFERRAL SYSTEMS IN THE BUILDING TRADES

U.S. DEPARTMENT OF LABOR
Labor-Management Services Administration
Office of Labor-Management Policy Development

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P R E F A C E

The variety of ways in which American workers search for and obtain employment has been analyzed in many studies. Some use the public employment offices, others seek out private employment agencies, follow the "help wanted" advertisements in the newspapers, go to employer personnel offices, seek information on openings from friends or relatives, register at hiring halls maintained by unions or by unions and employers jointly, and so forth.

These studies have provided much information on the relative efficacy of these various methods of search and the dissimilarity in their utilization by different groups of workers in different labor markets. White-collar workers, for example, utilize newspaper advertisements more than blue-collar workers. Journeymen members of craft unions frequently find the union their best source of job information. In a few industries, such as shipping, longshore, and building and construction, job placement is largely the function of formal hiring halls or some informal equivalent thereof. The largest of these industries in terms of employment is the building and construction trades, and this is the subject of the present study.

The concern here will be with the nature of the employment relationships in the industry, the Federal law governing certain aspects of that relationship, the extent of exclusive union work referral systems in the industry and the standards which are applied to those who seek access to jobs under this referral system.

This study was conducted by Vincent A. Cicconi and Herbert J. Lahne, Chief of the Division of Research and Analysis.

July 1970

I. INTRODUCTION

Current public interest in advancing the employment and training of minority group workers extends over all areas of the economy. In certain industries, however, the nature of the industry and its employment and training practices may pose greater problems in achieving this goal than in other fields. In industries characterized by a pattern of intermittent employment and a fluctuating demand for labor, labor pools have developed from which the employer seeks to satisfy his need for help quickly for jobs of relatively short duration. In shipping, the duration will usually be the length of the voyage of a particular vessel. In longshore work, it will be as long as there are ships in port to be loaded or unloaded. In the building and construction field, the duration of a specific project usually marks the outside boundaries of the duration of employment, but probably few of the workers attain this degree of continuity of employment. Different crafts are needed at different times and in varying numbers -- so there is a rather constant coming-and-going from the job and back into the whole construction industry pool and its constituent craft parts.

In these intermittent employment industries, the size, composition, and control of the labor pool have been important factors in their labor relations picture. How large should the pool be? Who controls entry into the pool and on what terms? Who determines who gets which jobs available to the pool? Which employers are entitled to call for workers from the pool and on what conditions?

The answers to these and related questions have varied from time-to-time between industries and within different segments of the same industry. Both employers and unions have contested for control of the labor pool -- with the government sometimes intervening under wartime circumstances or when some particular developments indicated a public interest in the operation of the pool. In the longshore industry and shipping, for example, when the unions were weak or nonexistent the early pools were simply groups of men who habitually congregated around the waterfront area hoping to be put to work by the employer. All aspects of the labor pool were thus controlled by the employer. Among the first demands of unions organized in these fields was that the men hired be members of the union -- thus giving the unions a voice in the size and composition of the pool. At present, the unions control the labor pool in shipping on both coasts. Employers and unions jointly control the longshore pool on the West Coast. And a bi-state agency, the Waterfront Commission, controls the longshore pool in the important New York-New Jersey harbor area.

In the highly organized building and construction industry, with which we are here concerned, control of the labor pool commonly rested completely with the unions prior to passage of the Taft-Hartley Act in 1947. This control was exercised through closed shop agreements, under which a worker had to be a union member before he could be employed by any employer party to the agreement. Thus, under closed shop conditions, the unions determined the size and composition of the pool by controlling admission to the union. But while union membership guaranteed the worker a place in the labor pool, it did not guarantee him any particular job on any particular project. Access to particular jobs was controlled by the union through an adjunct to the closed shop -- namely the union hiring hall or work referral system.

Basically, a hiring hall or work referral system is an arrangement under which an agency or institution which has control of or access to a particular labor pool agrees to supply workers to an employer upon request. In the intermittent employment industries, such an arrangement allows employers to fill their labor needs quickly and efficiently from a single source. For these workers, there is the advantage of a single clearing house for the jobs -- obviating the need to go from employer to employer. When the system is operated and controlled by the union under closed shop conditions, there is the further advantage to the union and its members of controlling the size of the labor pool in accordance with the union's estimate of employment opportunities. Under these conditions, the size of the pool and the size of the membership are identical. 1/

There is clearly a relationship between admission to the labor pool, the work referral system, and the problems of opening up the building and construction industry to minority employment. For example, the public discussion of the pros and cons of the controversial Philadelphia Plan for increasing minority employment shows a recognition of the importance of the work referral system. Attorney General Mitchell in his legal opinion supporting the plan, noted that it places

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1/ This is not true under all circumstances. When there is an increased demand for labor which the union considers temporary, it may admit nonmembers to the pool by issuing permits allowing them to work without admitting them to membership. Then the pool is larger than the membership. Some local unions at some times have stretched the meaning of "temporary" over several years and the national union has stepped in to stop that practice. Herbert J. Lahne, "The Union Work Permit," Political Science Quarterly, September 1951.

"squarely upon the contractor the burden of broadening his recruitment base whether within or without the existing union referral system, . . ." (Emphasis supplied.) 2/

Senator Ervin, in opposing the plan, noted that under Taft-Hartley it is an unfair labor practice for an employer or union to unilaterally alter the terms of a collective bargaining agreement, so that

". . . if the Philadelphia plan required a contractor with an exclusive union hiring agreement to employ minority group workers from outside the existing referral system, it would compel him to violate Taft-Hartley." 3/

As has been noted above, even union membership does not assure the member access to particular jobs as the openings occur. This access is controlled by the work referral system -- so it is this system which is the key to continuing employment opportunity for minority workers.

The union-controlled work referral system, which developed long before the current drive to gain access to building trades jobs for minority groups is, of course, only one facet of the minority employment problem along with the related aspects of access to apprenticeship and the admission of those who have acquired their skills outside of the apprenticeship system. It is not surprising, therefore, that the most vocal advocates of expanding minority employment in this industry have not confined their criticisms to the referral system. Herbert Hill, Labor Director of the National Association for the Advancement of Colored People, has stated that:

2/ Opinion of the Attorney General on the Revised Philadelphia Plan, September 22, 1969, p. 13. This section of the Attorney General's legal opinion was specifically cited by Secretary of Labor Shultz at a press conference on the Philadelphia Plan held on September 23, 1969. See TR. p. 39.

3/ Remarks delivered on the Senate floor, December 15, 1969, reproduced in 72 LRR 469-480 at 469 (December 22, 1969).

"The time has come to take a completely new approach and bypass the entire obsolete structure of union control over hiring and training in the construction industry." 4/

And the Wall Street Journal summed up the criticisms of the Negro protest groups as follows:

"Thus, in addition to demanding more jobs, it has become increasingly clear that the real goal of Negro protest groups is to gain some measure of control over union hiring and training practices. Under the present system, contractors nominally share responsibilities for hiring workers and apprenticing them. But in practice contractors exercise little real power in hiring.

"When a contractor needs a work force, he calls the unions for referrals. First call goes to union members who have been certified as competent by the unions themselves." 5/

Employers in the organized sector of the construction industry have, in the past, been supporters of work referral systems administered by the unions. 6/ In recent years, however, the tight labor market with its recurring shortages of construction labor has led to some change of heart. This past year, the Construction Problems Task Force of the U.S. Chamber of Commerce, which included major employers and employer groups in the industry attributed

"the manpower problem, in part, to the fact that contractors have abdicated to the unions too much of their personnel responsibilities and have allowed the unions to restrict the size and mobility of the workforce through restrictions on union membership and apprenticeship and through their hiring hall and referral systems." 7/

Thus, criticism of union-controlled work referral systems in terms of their practical effect has spread from minority groups to the Federal government and to employers themselves.

4/ Quoted in Thomas J. Brady, "Bucking Big Labor," Wall Street Journal, September 26, 1969, p. 1.

5/ Ibid., p. 18.

6/ This will be specifically documented in the next chapter of this study.

7/ "Industry May Get Owners' Help," Engineering News-Record, August 7, 1969, p. 42.

Despite these criticisms and the voluminous public discussion of the work referral systems in the building trades, little detail has heretofore been available in many factual areas of the operation of such systems. In this study we will examine the status of union-controlled exclusive work referral systems, as defined below, under Federal Labor law, the extent to which building trades employees are covered by such systems, the provisions for the operation of these systems in collective bargaining agreements, and pertinent provisions in the constitutions and bylaws of the unions affiliated with the Building and Construction Trades Department of the AFL-CIO, and those unaffiliated unions party to major construction industry collective bargaining agreements.

For the purposes of this study, attention will be confined, unless otherwise specified, to the exclusive work referral system, which is defined as a system whereby the employer is required to recruit his labor solely and exclusively through the union. A system will not be deemed to escape from the exclusive category by reason of limited exceptions -- such as those which allow direct hiring by the employer of key personnel, men with special skills, and so forth. It will also be considered exclusive if it requires the employer to notify the union of job openings so that the union has the first opportunity (usually within some specified time) to refer workers, with the employer free to secure labor from other sources when the union cannot fill his requirements. But it will not be considered exclusive if it requires notification to the union but gives the union only an opportunity to refer workers.

II. STATUS UNDER FEDERAL LABOR LAW 8/

Prior to 1947 there was no Federal labor legislation applying to the building and construction industry which had any relationship to the closed shop or the work referral systems in the industry. The National Labor Relations Act (Wagner Act) of 1935 did specifically preserve the closed shop in a proviso to section 8(3) which stated, subject to certain safeguards not here relevant, that:

> "Nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization . . . to require, as a condition of employment, membership therein . . ."

Because the National Labor Relations Board, which administered the Wagner Act, did not take jurisdiction over the building and construction industry on the grounds that it was local in character, the above proviso is presented simply as prelude to the later legislative changes in the NLRA.

In 1947, the Taft-Hartley Act amended the NLRA. To the unfair labor practices of employers were added unfair labor practices by unions. Section 8 and the proviso quoted above were rewritten and the new section 8(a)(3) made it an unfair labor practice for an employer

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8/ This chapter does not constitute an official legal interpretation by the Department of the statutes or cases discussed.

"by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later . . ."

At the same time, it became an unfair labor practice for a union, under section 8(b)(2)

"to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership . . ."

Clearly, Taft-Hartley intended to abolish the closed shop which required union membership prior to hiring. Anyone could be hired provided he joined the union on or after his thirtieth day of employment. And if the union refused to admit him for any reason other than his failure to pay the regular dues and initiation fees, the union could not secure his discharge.

At the same time, because Taft-Hartley did not specifically make any reference to work referral systems or hiring halls, it ushered in a period of uncertainty as to what role the unions would be permitted to play, if any, in acting as the manpower supply agency for the building and construction industry over which the NLRB was now prepared to assert jurisdiction.

A good deal of the confusion centered around a dispute between proponents and opponents of Taft-Hartley on the question of whether or not the new act made absolutely illegal those collective bargaining agreements which gave the union control over hiring, or only barred actual discrimination against nonmembers in hiring. Thus, in 1947, shortly after the Act was passed, Senator Taft gave his personal approval to a contract of the Sailors' Union of the Pacific under which the employers agreed to give preference to seamen furnished by the union who had previously worked for the signatory employers; and the union agreed to recognize this preference and also to give regard to "competency and dependability" in furnishing seamen. 9/ On the surface of the contract, union membership was not a factor in hiring, for as the union said, "Every sailor on the Pacific coast belongs to the union, so the shipowners do not have to ask for union men, . . ." 10/ And Senator Taft himself stated that, "I do not think the law was intended to abolish hiring halls." 11/

Looking at the building and construction industry specifically, in January 1950, the General Counsel of the NLRB, addressing the Building Trades Employers' Association of New York City, stated:

9/ U.S. Congress, Senate, Subcommittee on Labor-Management Relations of the Committee on Labor and Public Welfare, Hearings on Hiring Halls in the Maritime Industry, 81st Cong., 2d Sess., (Washington: G.P.O., 1950), p. 163.

10/ Ibid., p. 161.

11/ Ibid., p. 169.

"In the construction industry, the matter of the union shop has been the source of much uneasiness ever since the Taft-Hartley Act went on the books. The union shop provision of the law definitely was designed to do away with the old closed shop, under which a man was required to be a member of the contracting union before he could even be considered for a job. Now, all of that is prohibited as, also, is the use of the hiring hall, either directly or indirectly . . . There simply is no such further thing as the closed shop or the hiring hall, now any legitimate way by which the employer can contract to prefer union members over nonunion members in the matter of hiring." 12/

In June 1950, however, the General Counsel found it desirable to issue a clarification:

"In view of the rather considerable amount of discussion concerning the operation of hiring halls, and the general concept that every hiring hall is ipso facto in violation of the law . . ." 13/

Referring to a case arising out of the contract between the employers and a local Building and Construction Trades Council which included an exclusive union work referral system, the General Counsel noted that the agreement called for the referral of members and nonmembers alike and that there would be no discrimination against nonunion men in the operation of the hiring hall. The General Counsel found that, in fact, there had been no discrimination and

"Accordingly, he has announced that hiring halls of this character which are committed to non-discrimination in as precise language as is found in this contract, and which in fact are conducted without discrimination, are entirely within the purview of the Act in their general operations." 14/

Prior to this clarification by the General Counsel, however, the building trades employers had already joined with the unions to preserve the traditional hiring practices of the industry within the framework of the Taft-Hartley ban on the closed shop. Thus, in 1949, they urged the NLRB to consider the employers' needs (in deciding cases) in the following terms:

12/ Quoted in Ibid., p. 168.
13/ NLRB, Press Release RGC-1, June 28, 1950.
14/ Ibid.

"It has been the traditional custom in the construction industry, whether or not the workmen were union members, for the employer to have the right to select the workmen best suited for the work to be done.

"It was his traditional custom in selecting men to consider necessary qualifications, such as --

"A. Basic training for the work: For quality of work and good production he must be assured that he has had sound basic training.

"B. Experience: He should have had experience in performing that kind of function, on that kind of construction, and with similar contractors and other crews.

"C. Skill: He should have a degree of skill such as has been required by other contractors for similar work.

"D. Safety training: He should have worked where proper precautions against accidents are taken and safety practices have been recognized -- otherwise he will endanger himself and the safety and morale of the entire working force.

"E. Cooperation: He should be cooperative in his attitude to the other workmen on other trades on the job.

"F. Permanent connections: It must be possible to locate him on such short notice for employment and after employment.

"G. Character reference: In many operations reputation for good character is essential."

"Construction Employer Must Man His Jobs Quickly"

"It is obvious that the quick need for workmen in construction makes the use of men not previously employed by this management frequent. It is likewise obvious that some agency would be used which could identify men of the qualifications required . . .

"It has been the custom in many communities where union men are employed to measure these qualifications to large degree by the workman's ability to hold membership in a union. Under many circumstances the union did function as the only recruiting agency which could obtain quickly the qualified men required by the employer." 15/

15/ Statement to the National Labor Relations Board by Construction Industry Employer Representatives Serving on Joint Board for the Settlement of Jurisdictional Disputes with Reference to Labor Management Relations in the Construction Industry in the Present Status of the Administration of the Labor Management Relations Act of 1947, October 26, 1949, mimeo, pp. 16-17. Reprinted in part, including quoted material, in U.S. Congress, Senate, Subcommittee on Labor-Management Relations of the Committee on Labor and Public Welfare, Hearings on S. 1973, to Amend the National Labor Relations Act, as Amended, with Reference to the Building and Construction Industry, 82nd Cong., 1st Sess., (Washington: G.P.O., 1951), p. 158.

And the representative of a large West Coast construction firm testified:

> ". . . experience has shown, at least in our area, that unless you run all over the country recruiting, which has been done in some cases, the local unions are the experienced and the accessible source of your labor supply." 16/

He further stated that:

> "Generally the contractor finds that it is better to have /recruitment and ascertainment of skill/ handled by the representatives of the men themselves. As you will note by a study of our agreements, basically they all provide that the contractor has freedom of selection, so that when the men are sent to him he has control of how long they stay on the job. He can pick the men he wants.
>
> "But the manner of bringing the men in, certifying as to their qualifications, and bringing them to the job generally is best handled by the representatives of the workmen themselves." 17/

It was against this background that the law of union work referral systems under Taft-Hartley was developed on a case-by-case basis by the NLRB. Without going into the detail and ramifications of the many cases decided before 1958, it can be said that the main lines of decisions held (1) that a collective bargaining agreement embodying a union work referral system was illegal if, on its face, it provided for discrimination against nonmembers in hiring even though no proof of individual discrimination was adduced, (2) that if the agreement did not provide for such discrimination on its face (or had a nondiscrimination clause), the contract itself was legal but proof of individual discrimination in fact would constitute the basis for an unfair labor practice finding under the Act.

In 1958, the NLRB laid down a new set of rules for collective bargaining agreements involving union work referral systems. Appropriately enough,

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16/ Ibid., p. 170.
17/ Ibid., pp. 173-174.

the leading case came up in the building trades. It involved several local chapters of the Associated General Contractors of America and a local and district council of the Laborers' International Union, AFL-CIO. 18/ (It became known as the Mountain Pacific case after one of the AGC chapters.)

The contract in the Mountain Pacific case provided simply that the "recruitment of employees shall be the responsibility of the Union," that the employers would "call upon the Local Union . . . to furnish qualified workmen," and that the employer could get help elsewhere if the union could not supply them within 48 hours of the request. The contract did not refer in any way to discrimination or nondiscrimination, nor did it set up any guides for the union to follow in referring workers.

The Board found the exclusive work referral system set up by the contract to be unlawful in and of itself, apart from any evidence of discrimination in hiring. 19/ It stated:

> "The Respondents do not, nor could they argue that this contract does not make employment conditional upon union approval, for a more complete and outright surrender of the normal management hiring prerogative to a union could hardly be phrased in contract language." 20/

> "The basic question herein is whether the written contract, apart from all other evidence in the case, is itself unlawful because of the exclusive hiring hall it contains. We hold the hiring hall provisions of this contract to be unlawful . . .
> "Significantly, the contract is silent as to methods or criteria to be followed by the Union in performing its function as hiring agent. Under this contract and hiring hall, the Union is free to pick and choose on any basis it sees fit. Not only do the employers have no voice in the selection of applicants, but, for all the

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18/ Mountain Pacific Chapter, 119 NLRB 883 (1958), 41 LRRM 1460.
19/ There was, in fact, evidence of discrimination against the individual who filed the complaint and the Board also found for the complainant on this score.
20/ 119 NLRB p. 894.

employers know or care, the Union's purpose in selecting some and rejecting others may be an encouragement towards union membership, or towards adherence to union policies, matters which, were they the basis for direct employer selection, would constitute clear discriminations within the meaning of Section 8(a)(3) of the Act.

"From the standpoint of the working force generally -- those who, for all practical purposes, can obtain jobs only through the grace of the union or its officials -- it is difficult to conceive of anything that would encourage their subservience to union activity, whatever its form, more than this kind of hiring hall arrangement . . ." 21/

The Board, however, disclaimed any intention of outlawing all hiring halls, holding the vice in this case to be "unfettered union control over all hiring, . . ." 22/ It also stated that the basis of union referral could be "any selective standard or criterion which an employer could lawfully utilize in selecting from among job seekers." 23/

The Board then concluded with a racital of the conditions under which it would approve a union work referral agreement:

". . . we would find an agreement to be non-discriminatory on its face, only if the agreement explicitly provided that:

"(1) Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

"(2) The employer retains the right to reject any job applicant referred by the union.

"(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement.

"If in the operation of a hiring hall that comports with these requirements and is therefore lawful on its face discriminatory acts occur, they are, of course violations of the statute, both by the union which refers or refuses to refer on a discriminatory basis, and by the employer who has delegated the hiring authority to the union." 24/

21/ Ibid., pp. 894-895.
22/ Ibid., p. 896.
23/ Ibid., p. 897.
24/ Ibid.

The strictures laid down by the Board in the Mountain Pacific case were not destined for a long life. Enforcement was denied by the Court of Appeals, 25/ and the whole doctrine was struck down by the Supreme Court in a case in another industry discussed just below.

Less than a year after Mountain Pacific, the Board had occasion to consider a case involving a local of the International Brotherhood of Teamsters and certain trucking employers. The agreement required the employer to call upon the union when it needed casual help; such help was to be dispatched by the union on the basis of seniority in the industry, and seniority rating was to be regardless of membership or nonmembership. Discharge resulted in loss of seniority status. There was no evidence of discrimination against a nonmember. The complainant was a union member who had secured casual employment without going through the exclusive union referral system for casuals. On this basis, the union requested and secured his discharge. Because the contract did not contain the safeguards the Board said it would require in Mountain Pacific, the contract was held to be violative of the Act and the discharge was illegal. 26/

Although the Board was successful in the Court of Appeals on the contract issue, 27/ the Supreme Court held otherwise in 1961. 28/ Speaking in the context of the Board's decision in Mountain Pacific, Justice Douglas for the majority stated:

25/ 270 F. 2d 425 (1959), 44 LRRM 2802.
26/ Los Angeles-Seattle Motor Express, 121 NLRB 1629 (1958), 43 LRRM 1029.
27/ Local 357, Teamsters v. NLRB, 277 F. 2d 646 (1960), 45 LRRM 2752.
28/ Local 357, Teamsters v. NLRB, 365 U.S. 667 (1961), 81 S.Ct. 835, 47 LRRM 2906.

"It may be that the very existence of the hiring hall encourages union membership. We may assume that it does. The very existence of the union has the same influence. When a union engages in collective bargaining and obtains increased wages and improved working conditions, its prestige doubtless rises and, one may assume, more workers are drawn to it. . . . But . . . the only encouragement or discouragement of union membership banned by the Act is that which is 'accomplished by discrimination' . . . .

"It may be that hiring halls need more regulation than the Act presently affords . . . . Perhaps the conditions which the Board attaches to hiring-hall arrangements will in time appeal to the Congress . . .

"The present agreement for a union hiring hall has a protective clause in it, . . .; and there is no evidence that it was in fact used unlawfully. We cannot assume that a union conducts its operations in violation of law or that the parties to this contract did not intend to adhere to its express language. Yet we would have to make these assumptions to agree with the Board that it is reasonable to infer the union will act discriminatorily.

"Moreover, the hiring hall, under the law as it stands, is a matter of negotiation between the parties. The Board has no power to compel directly or indirectly that hiring halls be included or excluded in collective agreements . . . Its power, so far as here relevant, is restricted to the elimination of discrimination. Since the present agreement contains such a prohibition, the Board is confined to determining whether discrimination has in fact been practiced. If hiring halls are to be subjected to regulation that is less selective and more pervasive, Congress not the Board is the agency to do it." 29/

While these cases involving exclusive union work referral systems were under consideration by the NLRB and the courts, the unions and the employers in the building and construction industry were engaged in efforts to secure amendments to Taft-Hartley which would ease the problems of applying the Act to their operations. The objectives were: (1) to establish the legality of agreements signed when an employer had not yet hired his work force (popularly referred to as pre-hire agreements), (2) to shorten the 30-day period during which an employee need not join the union (desired because of the intermittent and short-term employment pattern in the industry) and (3) to clearly legalize agreements providing for exclusive union work referral systems.

29/ 365 U.S. 667 at 675-7.

All of these objectives were attained in 1959 with the passage of the Landrum-Griffin Act which carried with it certain amendments to Taft-Hartley. The new section 8(f) provided that:

> "It shall not be an unfair labor practice . . . for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members. . . . because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: . . ."

The legislative history of this amendment indicates approval of exclusive referral systems and of any objective nondiscriminatory criteria of referral.

> ". . . similar to last year's bill are provisions permitting an exclusive referral system or hiring hall based upon objective criteria for referral. Such criteria as are spelled out in the bill are not intended to be a definitive list but to suggest objective criteria which shall be applied without discrimination. Thus it is permissible to give preference based upon seniority, residence, or training of the sort provided by the apprenticeship programs sponsored by the Department of Labor. These provisions are not intended to diminish the right of labor organizations and employers to establish an exclusive referral system of the type permitted under existing law." 30/

30/ National Labor Relations Board, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 2 vols., (Washington: G.P.O., 1959), vol. I, p. 424, from S. Rep. on S. 1555; also p. 778 for similar language from H. Rep. on H.R. 8342.

Thus, today (July 1970) the exclusive union work referral system is illegal under Taft-Hartley where the agreement provisions can be shown on their face to be discriminatory, or when discrimination is proved in fact, regardless of the formal agreement provisions governing the system. Further, in such referral systems, the law allows referrals to be conditioned upon minimum training or experience, and preference based on length of service with the employer, in the industry, or in the particular geographic area.

The above discussion of Taft-Hartley is based upon the provisions of that statute banning discrimination against nonmembers. It has not reviewed the NLRB doctrine of fair representation, though some of the cases under this heading have involved exclusive union work referral systems. 31/ It has also not reviewed the extent of the authority of NLRB to act, in other ways than under the doctrine of fair representation, when employer or union discrimination is alleged for reasons of race, color, religion, sex, or national origin, in view of the present (July 1970) uncertainty of the relationship between Taft-Hartley and the Civil Rights Act of 1964. 32/

31/ Simply defined, the doctrine of fair representation holds that the union must represent all employees in the bargaining unit (union and non-union) equally and fairly. In the usual factory case, for example, the union may not refuse to process a grievance simply because the grievant is not a member or is of a minority race. In at least one case (not in the building trades) the NLRB found a Taft-Hartley violation of the fair representation doctrine where the union, under an exclusive union work referral system, refused to register applicants on racial grounds as well as on the ground that they were not union members. See: Houston Maritime Assn., 168 NLRB No. 183 (1967), rev'd on other grounds, 74 LRRM 2200 (C.A. 5, 1970).

32/ Farmers' Cooperative Compress, 169 NLRB No. 70 (1968), 67 LRRM 1266, aff'd and remanded, 416 F. 2d 1126, 70 LRRM 2489, and see dissenting opinion of NLRB Member Zagoria in NLRB decision on accepting the remand, in 72 LRRM 1251.

The Civil Rights Act of 1964, in Title VII, bans discrimination in employment and training because of race, color, religion, sex, or national origin, whether practiced by employers, employment agencies, labor organizations, or joint labor-management committees. The Act specifically mentions not only discriminatory refusal to hire or train, but discriminatory refusal to refer for employment.

The impact of this statute cannot be fully assessed as yet. Only a handful of court decisions have been issued which involve union work referral systems as such. 33/ Nevertheless, it is fair to say that the decisions so far presage a wide revision of the entire exclusive union work referral system. Not only have the courts found some such systems to be discriminatory in terms of the Civil Rights Act of 1964, but the decrees in several cases have set forth extremely detailed procedures for their operation in order to ensure compliance with the law. 34/

Finally, it should be noted that more than one observer has been dubious of these legislative efforts to kill the closed shop and control of the labor pool by the unions. In 1961, Orme W. Phelps, commenting on the 1959 amendments to Taft-Hartley, stated:

33/ The same is true of state legislation banning discrimination in much the same terms as the Federal legislation.

34/ Dobbins v. Local 212, IBEW, 292 F. Supp. 413 (1968), 69 LRRM 2313 (S.D. Ohio, 1968); U.S. v. Local 73, Plumbers, 2 FEP Cases 81 (S.D. Ind., 1969); Volger v. McCarty, Inc., (Local 53, Asbestos Workers), 294 F. Supp. 368 (1968), 65 LRRM 2554 (E.D. La., 1967), issued preliminary injunction, aff'd, 407 F. 2d 1047, 70 LRRM 2257 (C.A. 5, 1969); Volger v. McCarty, Inc., (Local 53, Asbestos Workers), 2 FEP Cases 491 (E.D. La., 1970); EEOC v. Plumbers, Local 189, 311 F. Supp. 468 (1970), 2 FEP Cases 529 (S.D. Ohio, 1970), order requiring modification of referral system stayed pending full hearing on union's appeal, 2 FEP Cases (C.A. 6, 1970); U.S. v. Sheet Metal Workers, Local 36, and Local 1, IBEW, 67 LRRM 2736 (E.D. Mo., 1968), rev'd and remanded, 416 F. 2d 123, 2 FEP Cases 127 (C.A. 8, 1969).

"Closed-shop unions will probably continue to be closed-shop, and operate as they have since 1947, when the Taft-Hartley Act was passed." 35/

And R. W. Fleming, also commenting on these amendments, observed:

"Nothing in the amendment permits the union to discriminate against non-members in making job referrals." 36/

but

"The fact that the agreement may now specify minimum training or experience qualifications, or give a priority to employees of an employer based upon length of service with him in the industry or area legalizes a device frequently used heretofore, and which is admittedly designed to favor union members." 37/

More recently, the Department of Labor stated that the low rate of minority employment in the skilled trades in the construction industry in Philadelphia was due

"to the traditional exclusionary practices of these unions in admission to membership and apprenticeship programs and failure to refer minorities in these trades." 38/

Despite these notes of pessimism, it should be observed here that several of the court decisions cited just above have condemned not only the discriminatory work referral systems as such, but also other aspects of the union-controlled hiring hall such as preference in referral based upon previous employment under a particular collective bargaining agreement which, though sanctioned by the 1959 amendments to Taft-Hartley, have the practical result of perpetuating discrimination contrary to the Civil Rights Act of 1964.

35/ Orme W. Phelps, Introduction to Labor Economics, (New York: McGraw-Hill, 1961), p. 527.

36/ R. W. Fleming, "Title VII: The Taft-Hartley Amendments," Northwestern University Law Review, 54:6, Jan.-Feb. 1960, p. 706.

37/ Ibid.

38/ Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction, U.S. Department of Labor, September 23, 1969, p. 4.

III. EXCLUSIVE WORK REFERRAL PROCEDURES IN COLLECTIVE BARGAINING AGREEMENTS

The purpose of this chapter is to show the extent of exclusive work referral systems in the construction industry, and the procedures for the operation of such systems, as specified by collective bargaining agreements.

SCOPE OF ANALYSIS AND EXTENT OF USE

The procedure used in identifying the agreements which provide exclusive work referral was to analyze all "key" collective bargaining agreements -- those covering 1,000 or more workers -- on file with the Bureau of Labor Statistics, and in effect on April 1, 1969, under the following Standard Industrial Classification Codes:

1) SIC 15 - Building Construction - General Contractors
2) SIC 16 - Construction Other Than Building - General Contractors
3) SIC 17 - Construction - Special Trade Contractors

A total of 303 agreements were in these categories. However, 10 agreements were not available for analysis, and 2 did not specify the type of referral system. This left 291 agreements for examination.

Type and Extent of Work Referral Provisions

Of the 291 agreements suitable for analysis, 132 were classified as providing exclusive work referral, 98 were classified as providing nonexclusive work referral, and 61 had no work referral provisions. 39/

Typical clauses in agreements classified as having exclusive work referral systems are set forth below:

> "The Union shall be the sole and exclusive source of applicants for employment." 40/

Similarly, another agreement provided that the union work referral system "shall be used exclusively" by the employer. 41/ Another agreement merely stated that "the Unions signatory hereto shall maintain an exclusive hiring hall . . ." 42/

In a number of instances agreements did not use such terms as "exclusive," or "sole," but fell within our definition of exclusive if they indicated that

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39/ The 61 with no work referral provisions were completely blank on the recruiting practices of the employer and the role of the union in supplying workers. The agreements classified as providing some form of work referral were those which provided for such hiring arrangements either in the basic agreement, or in a supplement which was on file with the Bureau of Labor Statistics. In the two agreements which did not specify the type of referral system, and were therefore dropped from the analysis, the basic agreement mentioned that a work referral system was in existence and that the details of the system were contained in a supplement which, however, was not filed with BLS. No attempt was made to go beyond the BLS files to determine to what extent agreements classified as not having work referral provisions in documents filed with BLS may have such provisions in documents which were not filed with BLS. Thus, the number of key situations which provide for work referral systems may be greater than the number of agreements classified here as having such provisions.

40/ Agreement between Houston Sheet Metal Contractors Association and Sheet Metal Workers, Local Union 54, July 1, 1967 - June 30, 1970, p. 20.

41/ Walt Disney World Project Agreement, August 1, 1968 - June 30, 1972, p. 2.

42/ Agreement between Associated General Contractors of America, Anchorage Chapter and Carpenters, Alaska State Council, March 15, 1968 - June 30, 1969, p. 4.

the employer was limited to the referral agency in his initial selection of workers. A Laborers 43/ agreement, for example, provided that:

> "The Local Union shall be recognized as the principal source of laborers and shall be given the first opportunity to refer qualified applicants for employment." 44/

Agreements were classified as providing nonexclusive work referral if the employer was given the freedom to hire workers from sources other than the referral system. Typically, agreements in the nonexclusive category specified that the union would maintain a referral system, and that employers would use this system as a source of labor. This type of hiring arrangement is illustrated by the following clause:

> "It is the intention of the parties that this shall constitute a nonexclusive hiring hall arrangement, but the Union shall be given equal opportunity with other sources to supply the employers' requirements for qualified employees." 45/

The table just below summarizes the data on work referral systems as shown by the key agreements and the extent of their use in contract construction. The 132 exclusive work referral agreements covered nearly 50 percent of the total number of workers covered by all of the key agreements available for study. If the key agreements are representative of all contract construction agreements, nearly 50 percent of all employees engaged in unionized contract construction would be working under agreements which provide exclusive

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43/ See Appendix for short form and full titles of national union names.

44/ Master Plasterers Association of Boston and Laborers, Massachusetts District Council, June 1, 1964 - May 31, 1969, p. 4.

45/ Agreement between Associated General Contractors, New Jersey Chapter and Laborers, Local Unions 472 and 172, March 1, 1968 - February 2, 1971, p. 2.

work referral. 46/ On the basis of 1968 employment, 47/ and a recent BLS estimate that 60 to 70 percent of the employees are organized, 48/ it would appear that between 941,000 and 1.1 million employees in the industry are covered by exclusive union work referral systems.

Type	Number of agreements	Number of employees covered	Percent of total employees covered
Total	291	989,150	100
Exclusive	132	474,650	48
Nonexclusive	98	314,100	32
No provision	61	200,400	20

As shown by table 1 below, the key agreements were concentrated in a handful of national unions. Agreements involving five unions comprised nearly 70 percent of all key agreements studied (the Laborers, the Operating Engineers, the Carpenters, the Electrical Workers-IBEW and the Plumbers). In regard to exclusive work referral, these five unions were party to over 70 percent of the 132 agreements with exclusive work referral provisions.

46/ This estimate of 50 percent may well be on the low side because it is based entirely upon the agreements and supplements filed with BLS. As set forth in footnote 39 above, the documents filed with BLS may not convey the full picture. To the extent that unfiled documents provide for exclusive referral, the percentage of workers covered would be higher. In addition, some employers whose contracts do not provide for any work referral system, or even provide for a nonexclusive work referral system, have been known to use the union as their sole source of employees. See, for example, NLRB v. Bechtel Corporation, 133 NLRB 1185, 48 LRRM 1803, aff'd 55 LRRM 2534.

47/ BLS reported that 1968 employment in the contract construction industry was 3,267,000, Monthly Labor Review, March 1970, Table 11, p. 86.

48/ Arnold Strasser, "Compensation in the Construction Industry," Monthly Labor Review, May 1970, p. 64.

Table 1
Types of Work Referral Systems in Effect April 1, 1969 in 291 Key Agreements, by National Affiliation of Union Party to the Agreement

National affiliation of union party to agreement	Number of agreements	Number of agreements with:		
		Exclusive work referral	Non-exclusive work referral	No provision
Total	291	132	98	61
Boilermakers	7	7	-	-
Bricklayers	11	1	3	7
Carpenters	60	15	24	21
District-50	2	2	-	-
Electrical Workers-IBEW	19	14	-	5
Elevator Constructors	2	1	-	1
Engineers, Operating	36	24	9	3
Iron Workers	14	5	6	3
Laborers	62	27	27	8
Lathers	3	3	-	-
Painters	12	4	3	5
Plasterers	5	1	4	-
Plumbers	25	14	8	3
Sheet Metal Workers	9	4	5	-
Teamsters	12	2	5	5
Two AFL-CIO unions or more	4	2	2	-
Two unions or more, different affiliations	8	6	2	-

Selection of Exclusive Work Referral Agreements for Analysis

A total of 82 exclusive work referral agreements were selected for a detailed analysis of work referral procedures. The method used for selecting the agreements to be analyzed was to classify all of the 132 exclusive work referral agreements by union affiliation and geographical area, and then to select 50 percent of the agreements of each union in a geographical area for analysis, with a minimum of one per union in each area. The following distribution shows the union affiliation of the agreements selected for analysis.

Union	Number of agreements
Total	82
Boilermakers	4
Bricklayers	1
Carpenters	9
District-50	2
Electrical Workers-IBEW	9
Elevator Constructors	1
Engineers, Operating	14
Iron Workers	3
Laborers	16
Lathers	2
Painters	2
Plasterers	1
Plumbers	7
Sheet Metal Workers	4
Teamsters	1
Two AFL-CIO unions or more	2
Two unions or more, different affiliations	4

ADMINISTRATION

A key factor in a study of exclusive work referral systems is to identify the agency which is the central administrator of the labor pool. This agency would have the responsibility for registering and referring applicants, and for determining whether applicants are qualified to register for referral. All 82 of the agreements studied with exclusive referral systems specified that the union would be responsible for registering and referring applicants -- none gave this responsibility to the employer. This means that an applicant for employment must go to the union to register for employment, and that employers must contact the union to obtain workers. Seventy-two of the 82 agreements specified that an applicant would have to meet certain qualifications in order to be eligible to register, while the other 10 had no provisions on this point. Of the 72 with qualifications, 70 specified that the union would determine whether an applicant met the qualifications and was eligible to register, and 2 agreements specified that the employer and union would jointly make this determination. Details of the administrative machinery and typical clauses are described below.

Registration and Referral

The union was responsible for the registration and referral of applicants in all 82 of the agreements studied. In general, the agreements specifically provided for the registration and referral of applicants by the union. For example, an Elevator Constructors agreement specified that:

> "The Union shall establish, maintain and keep current an open employment list for the employment of workmen competent and physically fit to perform the duties required.
> "Whenever desiring to employ /workmen/, the Employer shall call upon the Union or its agent for any such workmen as the Employer may, from time to time, need . . ." 49/

Similarly, a Carpenters agreement specified that the union would be responsible for registering and referring applicants, and provided that each local union covered by the agreement

> "shall establish and maintain open and nondiscriminatory employment lists for the use of workmen desiring employment on work covered by this Agreement . . ." 50/

A number of agreements specifically provided for the referral of applicants by the union, but did not provide for the formal registration of applicants by the union. However, these agreements

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49/ Agreement between Building Contractors and Mason Builders Association of Greater New York and Elevator Constructors, Local Union 1, July 1, 1966 - June 30, 1969, p. 2.

50/ Agreement between Associated General Contractors of Southern California and Carpenters, District Councils of Southern California, May 1, 1968 - June 15, 1973, p. 8.

did indicate that an applicant would have to go to the union to obtain employment. A Laborers agreement, for instance, specified that:

> "The Local Union shall be recognized as the principal source of laborers and shall be given the first opportunity to refer qualified applicants for employment." 51/

Determination of Eligibility

The classification of the party having the authority to determine whether an applicant was eligible to register was based on provisions in the agreements which specifically designated the party having such authority or, in the absence of a specific designation, the classification was based on provisions designating the party having the responsibility to register applicants for employment. Of the 82 agreements studied, 72 specified minimum qualifications for registration; and of these 72, the union was classified as having the authority to determine whether an applicant met the required qualifications in 70 agreements. The employer and the union were classified as having this authority jointly in two agreements.

In general, the agreements specified the union as the authority to determine whether an applicant was eligible to register. For instance, a Carpenters agreement specified that:

51/ Agreement between Hartford General Contractors Association and Laborers, Local Unions 230 and 611, April 1, 1965 - March 31, 1970, p. 2.

"The dispatcher at the Local Union . . . will determine whether a workman is qualified to register . . ." 52/

Similarly, a multiunion agreement covering locals of the Carpenters, Iron Workers, Laborers, Operating Engineers, Plasterers, Bricklayers and Teamsters provided that:

"The Local Unions through their Examining Boards shall examine all job applicants who have not previously passed an examination . . . in order to determine whether they are qualified to perform the work of the craft as a mechanic and be eligible for referral." 53/

The employer and the union were classified as having the authority to determine jointly whether an applicant was qualified to register in just two of the agreements. These two agreements, both Operating Engineers, specifically provided that the employer and the union would jointly determine whether an applicant met the qualifications specified by the agreement and was eligible to register for referral. 54/

Role of the Employer in Administration

None of the 82 agreements included in this study provided for an employer or jointly administered work referral system. However, 14 of the 82 agreements did provide for a joint referral or a joint

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52/ Agreement between Southern Nevada General Contractors Association and Carpenters, Local Unions 1780 and 2375, June 1, 1968 - May 31, 1973, p. 16.

53/ Agreement between Associated General Contractors, Mobile, Alabama and Mobile Building and Construction Trades Council, July 1, 1968 - June 30, 1970, p. 5.

54/ Agreement between Associated General Contractors, Inland Empire Chapter and Operating Engineers, Local Union 370, June 1, 1968 - May 31, 1971; and Agreement between Associated General Contractors, Mountain Pacific, Seattle Northwest and Takoma Chapters and Operating Engineers, Local Union 612, June 1, 1968 - May 31, 1971.

hiring committee, with the responsibility for supervising and controlling the operation of the referral system. The function of these committees, however, is not to administer the system but is limited to establishing general rules and regulations, while the day-to-day administration is the responsibility of the union. A Plumbers agreement provides a good illustration of the roles of the union and the joint committee in the operation of the work referral system. This agreement provided for the establishment of a

> "Joint Hiring Committee composed of three (3) employer representatives signatory to this Agreement appointed by the Employer Association, and three journeymen representatives appointed by the Union, to supervise and control the operation of the job referral system herein. The Joint Hiring Committee is empowered:
> "(a) To establish any and all rules and regulations from time to time that it deems advisable for the operation of the job referral plan, . . ." 55/

The agreement goes on, however, to state that a union representative is to be in charge of the referral office.

Inclusion of"Mountain Pacific"Provisions

It will be recalled that the NLRB ruled in the Mountain Pacific case that an agreement providing for a union administered exclusive work referral system was unlawful, even without specific evidence of discrimination, unless the agreement explicitly provided that: a) referral shall not be based on membership or non-membership in the union,

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55/ Agreement between Mechanical Contractors Association of New Mexico and Plumbers, Local Union 412, April 1, 1966 - March 31, 1970, pp. 23-24.

b) the employer has the authority to reject applicants, and c) the provisions of the agreement be posted in places where notices to applicants and employees are ordinarily posted. The NLRB felt that the inclusion of these provisions would serve to notify applicants for employment that the union did not have complete control over the referral system. Although the Supreme Court overruled the NLRB on the mandatory inclusion of such provisions, it is still of interest to know to what extent the provisions outlined by the NLRB have been incorporated in agreements providing for union administered exclusive work referral systems.

Of the 82 agreements studied, 73 specified that referral shall not be based on membership or nonmembership in the union, 76 specified that the employer has the authority to reject applicants, and 55 provided for the posting of the provisions of the agreement. 56/

56/ Under Title I, Section 104 of the Labor-Management Reporting and Disclosure Act of 1959, as amended, copies of collective bargaining agreements must be made available to employees who are affected by such agreements. The Department of Labor has ruled that:

> "All supplements which are incorporated by reference into a collective bargaining agreement become a part of it. Thus, where an agreement makes reference to a work referral system which the union is to administer, and further sets up terms, conditions and classifications of employees which the union is obliged to follow in referring applicants for jobs, the referral list is incorporated by reference into the basic agreement. Therefore, being part of the basic agreement, the referral list should be made available . . ." (U.S. Department of Labor, IMRDA Interpretative Manual, 110.320).

Thus, the provisions of a work referral system contained either in the basic agreement, or in supplements thereof must be made avail-

As shown in the tabulation below, 52 of the agreements included all 3 of the provisions, 22 contained 2 of the provisions, 4 specified 1 of the provisions, and 4 had none of the provisions.

Inclusion of "Mountain Pacific" Provisions

Provision		Number of agreements
Total agreements studied		82
All three provisions		52
Two provisions		22
Nondiscriminatory referral and employer authority to reject applicants	19	
Nondiscriminatory referral and posting	2	
Posting and employer authority to reject applicants	1	
One provision		4
Employer authority to reject applicants	4	
None of the provisions		4

Summary

The analysis of the 82 agreements has shown that the union is characteristically the administrator of an exclusive work referral system, and that the employer plays little, or no role in the administration of such systems. All 82 of the agreements gave the union the responsibility

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able to employees. Furthermore, work referral lists which are established pursuant to collective bargaining agreements must also be made available to employees.

for registering and referring applicants -- none gave these responsibilities to the employer. Additionally, 70 of the 82 agreements specified that the union determined whether an applicant met the qualifications specified by the agreement and was eligible to register for referral. Of the remaining 12 agreements, 2 provided for a joint employer-union determination of whether an applicant met the qualifications, and 10 did not specify any qualifications.

A total of 52 of the 82 agreements included all 3 of the provisions outlined by the NLRB in the Mountain Pacific case, and 30 agreements did not contain the complete set of provisions. Of these 30 agreements, 22 contained 2 of the provisions, 4 contained 1 of the provisions, and only 4 had none of the provisions.

ELIGIBILITY REQUIREMENTS AND METHOD OF DETERMINING ELIGIBILITY

The Taft-Hartley Act allows a union and an employer to enter into an exclusive work referral agreement which provides that applicants for employment are required to meet "minimum training or experience qualifications" 57/ in order to be eligible to register for referral. Since the Act explicitly provides that applicants may be required to meet certain minimum qualifications, the 82 agreements included in this study were analyzed in order to determine what qualifications are required, and how applicants could establish that they possessed the minimum qualifications specified by the agreements.

Minimum Qualifications

As was previously noted, 72 of the 82 agreements specified that an applicant would have to meet certain minimum qualifications in order to be eligible to register for referral. In 70 of these 72 agreements the union determines whether or not an applicant possesses the qualifications; in two agreements the employer and the union jointly make this determination. Ten agreements did not specify any minimum

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57/ See p. 17 above.

qualifications. Seven of these ten agreements were Laborers; the remaining three involved an agreement of the Carpenters, the Operating Engineers, and a multiunion agreement. 58/

In general, the 72 agreements with minimum qualifications indicated that an applicant for employment would need to have some experience or training in order to qualify for referral. This was the case in 71 of the 72 agreements studied. One agreement, an Operating Engineers, merely specified that an applicant would have to be a resident of the geographical area covered by the agreement.

The agreements were classified into two groups: those with "objective" minimum qualifications, and those with "subjective" minimum qualifications. An agreement was classified as providing objective minimum qualifications if the requirement, or one of the requirements, for registration was a prescribed number of years of experience, or the completion of apprenticeship; or in the absence of such requirements, the agreement specified that an applicant would be eligible for registration if he passed an examination, or met a residency requirement. 59/ An agreement was classified as

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58/ The union parties to the multiunion agreement are the Building and Construction Trades Council of Orlando, Florida, national unions affiliated with the Building and Construction Trades Department of the AFL-CIO, and the International Brotherhood of Teamsters.

59/ Although Taft-Hartley allows for "training or experience," none of the agreements referred to any type of training other than the completion of an apprenticeship. The use of the word "training" in this section, therefore, is a short way of saying "completion of an apprenticeship."

providing subjective minimum qualifications if it indicated, either explicitly or implicitly, that experience or training was a requirement for registration, but did not specify the amount of experience or training that an applicant would need in order to qualify for registration, and had no provision for residency or an examination; or if it did provide for residency or an examination, specified that an applicant would have to meet such a requirement, in addition to a training or experience requirement.

A total of 33 of the 72 agreements fell into the objective category, while 39 fell into the subjective category. In 32 of the 33 agreements with objective qualifications, the union has the authority to determine whether or not an applicant possesses the required qualifications. The union also makes this determination in 38 of the 39 agreements with subjective qualifications.

Objective Qualifications

The table just below shows that 29 of the 33 objective agreements specified a prescribed number of years of experience as a requirement, or one of the requirements, for registration, and 4 did not. In 19 of the 29 agreements with a prescribed number of years of experience, an applicant would be eligible to register for referral if he possessed the required experience. Ten of the 29

agreements, on the other hand, specified that an applicant would have to meet an examination requirement, in addition to the experience requirement, in order to be eligible to register for referral. Three agreements classified as providing objective qualifications specified that an applicant would have to have experience -- not defined in terms of years -- or pass an examination in order to be eligible to register for referral.

Qualifications for Registration as
Specified by Agreements with Objective Qualifications

Qualifications required	Number of agreements
Total	33
Agreements specifying number of years experience	29
Experience alone	13
Experience or completion of apprenticeship or pass examination	4
Experience or completion of apprenticeship	2
Experience and pass examination	10
Agreements not specifying number of years experience	4
Experience or examination	3
Residency	1

Thus, in 22 of the 33 agreements with objective qualifications, an applicant would be eligible to register for referral if he possessed the required experience; in 10 agreements, on the other hand, an applicant is required to pass an examination, in addition to meeting the experience requirement, in order to qualify for referral.

Single or Alternative Criterion Agreements. In the 22 agreements which specified that an applicant would be eligible to register for referral if he possessed the required experience, 13 had experience as the only qualification. The nine other agreements specified that applicants who did not meet the experience requirement would be eligible to register for referral if they met other requirements.

A Bricklayers agreement covering tile setters provides a good illustration of one in which experience is the only qualification. This agreement specified that:

> "Only qualified workmen shall be permitted to work under this Agreement. A qualified workman shall be defined as a person who has three (3) years experience in the setting of ceramic tiles." 60/

Similarly, two Plumbers agreements specified that only "qualified journeymen" would be eligible to register; and a "qualified" journeyman was defined as a worker with 5 years of practical working experience as a plumber, pipefitter or steamfitter in the construction industry. 61/

60/ Agreement between Associated Tile Contractors of Southern California and Bricklayers, Local Union 18, June 1, 1966 - May 31, 1977, p. 6.

61/ Agreement between Plumbing-Heating and Piping Employers

The nine other agreements specified that an applicant would be eligible to register for referral if he met the experience requirement, but also provided for the substitution of other qualifications in lieu of experience. Four agreements of the Boilermakers specified that an applicant would be eligible to register if he met one of the following requirements: 4 years of experience, completion of an apprenticeship program, or an examination. Three agreements (two Painters and one Laborers) specified that an applicant would be eligible to register if he had experience, not defined in terms of years, or had passed an examination. In two agreements (a Carpenters and a Lathers) the requirements for registration were a prescribed number of years of experience or completion of an apprenticeship program.

Nineteen of the 22 single or alternative criterion agreements with objective qualifications expressed the experience requirement in terms of years. The number of years of experience required by these 19 agreements is shown in the following distribution:

Council of Southern California and Plumbers, District Council 16, July 1, 1966 - June 30, 1969, and Southern California Pipefitting Agreement, Sept. 1, 1966 - Aug. 31, 1969.

Minimum years of experience, as provided in the agreement	Number of agreements
Total	19
"More than 1 year"	5
2 years	4
"More than 2 years"	1
3 years	1
4 years	5
"More than 4 years"	1
5 years	2

The minimum years of experience ranged from "more than 1 year" to 5 years. In 10 of the 19 agreements, the minimum experience requirement was equivalent to that for journeyman status for that particular craft. Three of the ten agreements (two Plumbers and one Carpenters) actually specified that journeyman status was a requirement. In seven agreements journeyman status as such is not required (four Boilermakers, one Bricklayers, one Electrical Workers-IBEW and one Lathers); however, the agreement, or the national constitution of the particular union, indicated that the experience requirement was equivalent to that required for journeyman status.

The minimum experience requirement in the remaining nine agreements does not appear to be equivalent to that required by the national constitutions or the agreements for journeyman status. The Electrical Workers-IBEW is signatory to seven of the nine agreements, and five of these agreements required "more than 1 year of experience,"

one required 2 years of experience, and one required "more than 2 years of experience." The remaining two agreements required 2 years experience (an Operating Engineers, and the other a multiunion agreement covering Operating Engineers, Laborers, Plasterers, Bricklayers and Lathers). For lather applicants under the multiunion agreement, however, the 2 year experience requirement would be equivalent to that required by the national constitution for journeyman status.

Multiple Criteria Agreements. Ten of the 33 agreements with objective minimum qualifications specified that applicants would have to pass an examination in addition to having the prescribed number of years of experience, in order to qualify for referral. In eight of these ten agreements, all applicants would have to pass an examination while in two agreements an examination is a requirement for certain applicants.

Two of the eight agreements which required an examination of all applicants were Operating Engineers; and they each specified that applicants

> "who have four years experience in the construction industry in any one or more of the classifications over whom the Union has jurisdiction . . . /and/ who have passed the Standard written and/or practical Journeymen Operating Engineer examination . . . ." 62/

would be eligible to register for referral. A Sheet Metal Workers agreement, likewise, provided that:

62/ Agreement between Nevada General Contractors and Operating Engineers, Local Union 12, July 1, 1965 - June 1, 1970, p. 7; and Agreement between Southern California General Contractors and Operating Engineers, Local Union 12, July 1, 1965 - June 1, 1969.

> "All . . . workmen desiring to be registered and dispatched as a Journeyman Sheet Metal Worker must show four (4) years experience with the tools of the trade and must present to the Dispatcher a certificate of qualification showing that he has passed a written examination and a practical test . . ." 63/

A Plumbers agreement, on the other hand, provided that applicants with 5 years experience would be eligible to register; however, the agreement also specified that applicants who have not passed a competency examination will not be dispatched to employers until they pass such an examination. 64/ The remaining four agreements with an experience and an examination requirement for all applicants were: two Iron Workers, one Electrical Workers-IBEW, and one multiunion covering Carpenters, Iron Workers, Laborers, Operating Engineers, Plasterers, Bricklayers and Teamsters.

In two of the ten multiple criteria agreements, some of the applicants would have to satisfy more than one criterion in order to be eligible for referral. Both of these are Plumbers agreements, and they have similar requirements for eligibility. For example, one of the agreements provided that:

63/ Agreement between Sheet Metal and Air Conditioning Contractors of Southern California and Sheet Metal Workers, Local Union 108, July 1, 1965 - June 30, 1970, p. 10.

64/ Plumbers, Local Union 412, op. cit.

"Contractors shall employ only qualified journeymen mechanics who have had at least five (5) years actual practical working experience in the pipefitting trade in the building and construction industry, as follows:

"(a) Have successfully served five (5) years as an apprentice at the trade . . .,

"(b) Have had previous employment in the pipefitting trade with a contractor signatory to this Agreement . . ., or

"(c) Have successfully passed an examination to the satisfaction of the Joint Hiring Committee . . ., attesting to the skill and training necessary to be a competent journeyman pipefitter." 65/

The applicants who would have to satisfy more than one criterion under these two agreements would be those who have 5 years experience, but who have not completed an apprenticeship program and do not have previous employment under the agreement.

The number of years of experience required by these 10 multiple criteria agreements is as follows:

Minimum years of experience, as specified by the agreement	Number of agreements
Total	10
"More than 1 year"	3
4 years	4
5 years	3

65/ Agreement between Mechanical Contractors Association of Washington, D.C. and Plumbers, Local Union 602, August 31, 1966 - August 31, 1969, p. 21. Similar language contained in Agreement between Mechanical Contractors Council of Central California and Plumbers, District Council 36, July 12, 1968 - June 30, 1971.

The experience requirement of these 10 agreements ranged from "more than 1 year" to 5 years. In seven of these ten agreements the experience requirement was equivalent to that usually required for journeyman status in that particular craft. In fact, six of the seven agreements actually specified that journeyman status was a requirement for registration (three Plumbers, two Operating Engineers and one Sheet Metal Workers). One of the seven agreements, an Electrical Workers-IBEW, did not specify that journeyman status as such was required; however, the agreement did indicate that the experience requirement was equivalent to that required for journeyman status. The experience requirement of three of the ten multiple criteria agreements did not appear to be equivalent to the experience required for journeyman status in the craft or crafts covered by the agreement (two Iron Workers and one multiunion agreement covering Carpenters, Iron Workers, Laborers, Operating Engineers, Plasterers, Bricklayers and Teamsters).

Administration of Examinations. A total of 17 of the 33 agreements with objective minimum qualifications had an examination requirement. In 7 of these 17 agreements, an applicant who met the experience requirement would not be required to pass the examination; in 10 of the 17 agreements, all, or certain, applicants would have to pass the examination, in addition to having the required experience. Since an examination is mentioned by a majority of the agreements with objective qualifications, some note should be taken of the party responsible for administering the examination under these agreements.

Six of the agreements with an examination requirement specified that the examination would be administered by a joint employer-union committee (two Plumbers, two Painters, one Laborers and one Sheet Metal Workers). For example, a Sheet Metal Workers agreement specified that applicants are required to pass "a written examination and a practical test prescribed and administered by the /Joint/ Examining Committee . . ." 66/ A Painters agreement, on the other hand, specified that the examination shall be administered by the Joint Labor Management Committee, or by an impartial person selected by the parties to the agreement. 67/

In four of the agreements with an examination requirement the union administers the examination (two Iron Workers, one Plumbers and one multiunion agreement covering Carpenters, Iron Workers, Bricklayers, Operating Engineers, Plasterers, Laborers and Teamsters). Each of these four agreements specified that the examining board of the local union would administer the examination. An Iron Workers agreement, for instance, specified that:

> "The Local Union, through its Examining Board, shall examine all job applicants who have not previously passed an examination conducted by a duly constituted /local/ in order to determine whether they are qualified to perform the work of the craft . . . and be eligible for referral." 68/

66/ Sheet Metal Workers, Local Union 108, op. cit., p. 10.

67/ Agreement between Floor Covering Association of Southern California and Painters, Local Union 1247, August 8, 1967 - July 31, 1970, p. 6.

68/ Agreement between Associated General Contractors of Connecticut and Iron Workers, Local Unions 424 and 15, July 1, 1966 - June 30, 1969.

A Plumbers agreement, likewise, specified that the local union's examining board would administer the examination; however, it also specified that one member of the board would be an employer representative. 69/

Seven agreements did not specify who would be responsible for administering the examination. However, four of these agreements, all Boilermakers, specified that the examination is "established" by a joint employer-union committee; and two agreements, both Operating Engineers, specified that a joint employer-union committee approves the examination. One agreement, an Electrical Workers-IBEW, did not provide any information concerning the examination.

Subjective Qualifications

As has been noted above, an agreement was classified as providing subjective minimum qualifications if it indicated, either explicitly or implicitly, that an applicant was required to have some training or experience in order to qualify for registration, but did not specify the amount of training or experience, and had no provision for residency or an examination; or if it did provide for residency or an examination, specified that an applicant would

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69/ Plumbers, Local Union 602, op. cit.

have to meet such a requirement, in addition to some experience or training.

A total of 39 of the 72 agreements with minimum qualifications fell into the subjective category. Of these 39 agreements, 38 provided that an applicant would need some level of training or experience, but had no provision for residency or an examination, and 1 agreement, an Operating Engineers, indicated that some level of training or experience was a requirement, and, in addition, required 2 years of residency in the normal construction labor market.

Typically, the agreements classified as providing subjective qualifications specified that an applicant must be a "competent" worker, a "qualified" worker or a "journeyman"; however, even though such terms imply a certain level of training or experience, the agreements did not specify the amount of training or experience required to be designated as a "competent" worker, a "qualified" worker or a "journeyman." An Elevator Constructors agreement, for example, spoke of "competent" workers:

> "The Union shall establish, maintain and keep current an open employment list for the employment of workmen competent . . . to perform the duties required." 70/

A multiunion agreement covering Carpenters, Laborers, Plasterers and Teamsters specified that registration is open to workers who are "properly qualified." 71/ Journeyman status, not defined in terms

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70/ Elevator Constructors, Local Union 1, op. cit., p. 2.
71/ Arizona Master Labor Agreement, July 26, 1965 - May 31, 1970, p. 17.

of years of experience or apprenticeship, was required by three of the four Sheet Metal Workers agreements included in this study.

A number of other agreements explicitly indicated that an applicant would need some experience or training in order to qualify for referral, but still lacked specificity in this requirement. These agreements generally specified that applicants would be required to submit a resume of their experience and qualifications at the time of initial registration. A Carpenters agreement, for example, specified that:

> "The Union shall require all job applicants who have not previously registered to submit a resume of experience and qualifications in order to determine . . . whether they are qualified to perform the various requisite skills of the craft and thereby be eligible for registration and/or referral." 72/

Similarly, an Operating Engineers agreement stated that:

> "All applicants must submit a written resume of their experience and qualifications at the time of original registration." 73/

Method of Determining Eligibility

Having established that an applicant would usually have to meet certain qualifications in order to be eligible to register for referral, and that the union characteristically determines whether an applicant meets the qualifications specified by the agreement, the next factor to be considered is: How does the union, or some other

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72/ Agreement between Associated General Contractors, Lake Charles, Louisiana and Carpenters, Local Union 953, July 1, 1967 - June 30, 1970, p. 20.

73/ Agreement between Building Trades Employers Association of Cleveland and Operating Engineers, Local Union 18, May 1, 1967 - April 30, 1970, p. 7.

party, determine whether or not an applicant actually possesses the qualifications specified by the agreement?

A total of 72 of the 82 agreements included in this study specified that an applicant would have to meet certain minimum qualifications in order to be eligible to register for referral. Of the 72 agreements with minimum qualifications, 37 also specified a method to be followed in determining whether an applicant possessed the required qualifications, and 35 did not. As shown by table 2 below, agreements with objective qualifications generally provided a method for determining eligibility, while agreements with subjective qualifications generally did not. The table also shows that of the 70 agreements in which the union has the authority to determine whether an applicant possesses the required qualifications, 35 specified a method of determining eligibility, and 35 did not.

Information supplied by the applicant regarding his experience or training was the most commonly mentioned method for determining whether an applicant met the qualifications specified by the agreement. This was the case in 20 of the 37 agreements which specified a method of determining eligibility. In general, these 20 agreements specified that an applicant was required to submit a resume of his experience at the time of initial registration, and that the determination of eligibility would be based on information contained in the resume. A Carpenters agreement, for example, stated that:

Table 2
Agreements Specifying a Method of Determining Eligibility, by Type of Minimum Qualifications and Party with Authority to Determine Eligibility

Type of minimum qualifications, and party with authority to determine eligibility	Agreements with minimum qualifications	Agreements specifying a method of determining eligibility	Agreements not specifying a method of determining eligibility
Total	72	37	35
	By type of minimum qualifications		
Agreements with objective minima	33	22	11
Agreements with subjective minima	39	15	24
	By party with authority to determine eligibility		
Union determines eligibility	70	35	35
Union and employer jointly determine eligibility	2	2	-

"The Union shall require all job applicants who have not previously registered to submit a resume of experience and qualifications in order to determine . . . whether they are qualified to perform the various requisite skills of the craft and thereby be eligible for registration and/or referral." 74/

In nine other agreements which provided a method of determining eligibility, the agreements specified that eligibility would be based on information supplied by the applicant regarding his experience and/or on the results of an examination. These nine agreements were ones which required an examination in lieu of, or in addition to, an experience requirement. A Sheet Metal Workers agreement, for example, required an examination, in addition to a designated number of years of experience, and it indicated that the union would base its determination of whether an applicant was eligible to register on information supplied by him and the results of an examination.

"/A workman/ desiring to be registered . . . as a Journeyman Sheet Metal Worker must show four (4) years experience with the tools of the trade and must present to the Dispatcher a certificate of qualification showing that he has passed a written examination and a practical test . . ." 75/

The eight remaining agreements also provided for the basing of eligibility on the results of an examination in lieu of, or in addition to, experience. However, these eight agreements did not specify what evidence or documents shall be supplied by the applicant himself, if any.

74/ Carpenters, Local 953, op. cit., p. 20.
75/ Sheet Metal Workers, Local 108, op. cit., p. 10.

Summary

The analysis of the provisions of 82 agreements with exclusive work referral with respect to eligibility requirements has shown that such agreements characteristically specify that an applicant would have to meet certain minimum qualifications in order to be eligible to register for referral. This was the case in 72 of the 82 agreements. (Ten agreements did not specify any minimum qualifications.)

The 72 agreements with minimum qualifications fell into two categories: those with objective minima, and those with subjective minima. Agreements in the objective category specified that the requirement, or one of the requirements, for registration was a prescribed number of years of experience, completion of an apprenticeship program, residency or an examination. Agreements in the subjective category, on the other hand, indicated, either explicitly or implicitly, that the requirement for registration was some level of training or experience, but did not specify the amount of training or experience required. Of the 72 agreements with minimum qualifications, 33 fell into the objective category, and 39 fell into the subjective category.

In 29 of the 33 objective agreements, the requirement, or one of the requirements, for registration was a specific number of years of experience. Of these 29 agreements, 19 specified that applicants would be eligible if they possessed the required experience (6 of these 19 provided for the substitution of other qualifications, such

as completion of apprenticeship or an examination in lieu of the experience requirement), and 10 agreements specified that applicants would be eligible if they possessed the required experience and had passed an examination. Four other objective agreements did not require a specific number of years of experience. Of these four agreements, three specified that applicants would be eligible if they had experience, not defined in terms of years, or had passed an examination, and one merely required residency.

SELECTION PROCEDURES

In the 82 agreements included in this study, an applicant who is qualified and registers for referral becomes the potential employee of any employer who is party to the agreement. The employer must contact the union for workers, and the union will then refer the requested number of workers. This section of the study analyzes the manner in which the union selects the workers, from among all those registered, to be referred in response to a request by an employer.

General Procedures

A total of 51 of the 82 agreements analyzed provided that the union was to follow some procedure in selecting applicants to be dispatched to an employer. Of this number, 41 stated that applicants would be selected on the basis of date of registration, 6 provided that applicants would be selected on the basis of seniority, experience or competency, 1 specified that certain applicants would be selected on the basis of date of registration and that other applicants would be selected on the basis of experience, and 3 made reference to a procedure, but this procedure was not susceptible

to analysis. 76/ Thirty-one agreements did not specify any procedure at all for selecting applicants for referral, merely stating that the union was to supply workers upon request, or words to that effect.

The most commonly used procedure for selecting applicants for dispatch was to select those applicants having the earliest date of registration. Under this procedure, applicants are ranked on a referral list according to their date of registration for employment, and the applicants with the earliest date of registration are selected before other applicants. Upon termination of employment, the applicants are required to re-register, and their names are placed at the bottom of the list. This method of selecting applicants for dispatch is commonly known as the first-in, first-out method, and an example of this procedure is the following:

> "Upon the request of the Contractor for Boilermakers or Blacksmiths, the Union shall immediately refer competent and qualified registrants . . . in sufficient number required, . . ., from the appropriate out-of-work list, on a first in, first out basis; that is the first applicant registered shall be the first applicant referred . . ." 77/

A much less frequent procedure for selecting workers for dispatch is to base referral on experience with employers signatory to the agreement, experience in the industry or competency. An example of this procedure is the following:

76/ Two said applicants would be referred from the "out-of-work" list but did not indicate any further details; one said the union was to follow its "normal procedure," again without further detail.

77/ Boilermakers Western States Field Construction Agreement, October 1, 1968 - September 30, 1971, p. 24.

"The Union, in referring workmen, shall give consideration to and shall be governed by the following criteria, . . . Length of prior employment with any Employer party to this Agreement; . . . Competency and experience in the performance of the particular tasks involved in the job to which referral is being made, . . ." 78/

Priority Groups

The previous section discussed dispatching as though all eligible applicants were registered on one list, and the dispatcher referred workers from this list according to the procedure, if any, specified by the agreement. However, in 46 of the 82 agreements analyzed this was not the case. 79/ In these 46 agreements eligible applicants are divided into two or more groups, with each group actually constituting a separate registration list; and in making referrals, the union dispatcher gives preference to those applicants registered in the highest group. This procedure results in all applicants registered in the highest group being referred first; and when that group is exhausted, the applicants in the next group are referred; and so forth until the applicants in all groups have been referred or all job requests filled.

Of these 46 agreements, 32 specified that applicants within any one group would be selected for referral on the basis of date of registration, 1 specified that selection would be based on experience, 1 specified that selection would be based on date of registration for

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78/ Agreement between Associated General Contractors of New Jersey and Operating Engineers, Local 825, July 1, 1968 - June 30, 1970, p. 2.

79/ All of these 46 are not necessarily included in the 51

2 groups and experience for 1 group, and 12 did not indicate how applicants within any one group would be selected for referral.

Basis of Priority Group Classification

Under the Taft-Hartley Act, an exclusive work referral agreement may provide for priority in referral based upon such criteria as length of employment with an employer signatory to the agreement, in the industry or in a geographical area, or upon other "objective criteria." 80/ Thus, an exclusive work referral agreement may divide applicants into priority groups on the basis of certain qualifications. The criteria used to classify applicants into priority groups in the 46 agreements which provide for such groups are presented in the following analysis.

The agreements with priority groups generally classified applicants into various groups on the basis of length of employment with employers signatory to the agreement, length of employment or residency in a particular geographical area -- usually the jurisdiction of a local union but in a few instances the area of the agreement. Of these 46 agreements, 20 classified applicants primarily on the

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which have selection procedures. An agreement may have priority groups but no procedure for selecting any individual within a priority group.

80/ See p. 17 above.

basis of their length of employment with employers signatory to the agreement and in 13 agreements the classification was based on length of previous employment under the agreement and a designated level of experience and/or an examination.

Employment with Signatory Employers, in a Geographic Area, or Residency. In 33 of the 46 agreements with priority groups, applicants were classified into the various groups on the basis of length of employment with employers signatory to the agreement, or length of employment or residency in a particular geographical area. These 33 agreements set up priority groups on the following bases:

	Number of agreements	
Total		33
Length of employment		29
Length of employment under agreement	20	
Length of employment - union jurisdiction or area of agreement	9	
Residency in local union jurisdiction		3
Residency or length of employment		1

In general, the agreements which classified applicants on the basis of their length of employment specified that applicants with a designated amount of employment would be classified into the group with the highest priority in referral; that applicants with lesser amounts of employment would be classified into successively lower groups; and that applicants who met only the minimum qualifications for registration would be classified into the group with the lowest priority in referral. 81/ This procedure is illustrated by a multiunion agreement covering Carpenters, Laborers, Plasterers and Teamsters, which specified that registered applicants would be divided into three groups on the basis of their length of employment with employers signatory to the agreement. The group with the highest priority in referral consists of "workmen who . . . have been formerly employed for a period of at least sixty (60) days by any individual

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81/ While the agreements designated as classifying applicants on the basis of their length of employment with employers signatory to the agreement, or length of employment in a particular area typically followed this procedure, several agreements modified the procedure to a certain extent. Such agreements based group classification essentially on length of employment, with signatory employers or in the particular area; however, they also added such criteria as employment under agreements of other locals of the same national union, and employment in areas other than the designated area. In general, these agreements specified that the group with the highest priority in referral would consist of applicants who had a designated amount of employment with employers signatory to the agreement, or in a particular geographical area, the group with second priority in referral would consist of applicants who had a designated amount of employment under agreements of other locals of the same national union, or in other geographical areas, and the lowest group would be composed of applicants who met the minimum qualifications for registration.

employers signatory to the Master Labor Agreement . . ."; the group with the second priority is comprised of "workmen who . . . have been formerly employed for a period of at least forty-five (45) days by any individual employers signatory to this Agreement . . ."; and the group with the lowest priority is composed of "all other workers who are properly qualified." 82/ A Carpenters agreement, on the other hand, merely divided applicants on the basis of whether or not they had previous employment in the jurisdiction of a local union. This agreement classified applicants into two groups, with the group with the highest priority in referral consisting of applicants "who within two (2) years immediately preceding the job order performed work of the type covered by the collective bargaining agreement in the geographical area of the Local Union"; and with the second group consisting of "all other individuals." 83/

In three agreements, applicants were classified into the various groups on the basis of whether or not they were residents of the jurisdiction of a local union. These three agreements (two Boilermakers and one Lathers) specified that applicants would be divided into two groups, with the first group consisting of residents of the local union's jurisdiction, and the second group consisting of non-residents.

82/ Arizona Master Labor Agreement, op. cit., p. 14.

83/ Agreement between Associated General Contractors, Idaho and Carpenters, Rocky Mountain District Council, June 1, 1965 - May 31, 1971, p. 4.

Employment with Signatory Employers, Examination and Experience. In the remaining 13 of the 46 agreements with priority groups, applicants were classified into the various groups on the basis of their length of employment with employers signatory to the agreement and their experience in the trade. Twelve of these agreements additionally based group classification on an examination.

With the exception of one agreement, a Laborers, these agreements generally specified that the highest group would consist of applicants who had a designated amount of employment with employers signatory to the agreement, and a prescribed amount of experience in the trade and had passed a journeyman's examination; the second group would consist of applicants who had the same amount of experience in the trade as that required for the highest group and had passed a journeyman's examination; the third group would consist of applicants who had a designated amount of experience and employment under the agreement, but less than that required for the highest group; and the fourth, and lowest group, would consist of applicants who met the minimum qualifications for registration. An Electrical Workers-IBEW agreement, for example, specified that applicants would be classified into four groups in the following manner:

"Group I. All applicants for employment who have four (4) or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a journeyman's examination given by a duly constituted Local Union of the IBEW and who have been employed for a period of at least one (1) year in the last four (4) years under a collective bargaining agreement between the parties to this addendum.

"Group II. - a) All applicants for employment who are residents of the State of Washington and who have four (4) or more years' experience in the trade and who have passed a journeyman's examination given by a duly constituted Local Union of the IBEW in the State of Washington.

b) All applicants for employment who have four (4) or more years' experience in the trade and who are members of the IBEW having passed a journeyman's examination given by a duly constituted Local Union of the IBEW who reside outside the State of Washington.

"Group III. All applicants for employment who have two (2) or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six (6) months in the last three (3) years in the trade under a collective bargaining agreement between the parties to this addendum.

"Group IV. All applicants for employment who have worked at the trade for more than one (1) year." 84/

The Laborers agreement merely classified applicants on the basis of their length of employment with employers signatory to the agreement and length of experience in the trade.

84/ Agreement between National Electrical Contractors Association, Puget Sound Chapter and Electrical Workers-IBEW, Local 46, July 1, 1967 - June 30, 1969, pp. 26-27.

Summary

A total of 51 of the 82 agreements specified that the union would follow some procedure in selecting applicants to be referred to employers. Of these 51 agreements, 41 specified that applicants would be selected on the basis of date of registration, 6 specified that selection would be based on seniority, experience or competency, 1 provided that certain applicants would be selected on the basis of date of registration and that other applicants would be selected on the basis of experience; and 3 made reference to a procedure, but did not provide any further detail suitable for analysis.

Forty-six of the agreements (34 of which specified that a selection procedure would be followed and 12 which did not) provided for the division of applicants into groups with separate priorities of referral. Under these 46 agreements, applicants in the group with the highest priority in referral are referred first, applicants in the group with the second priority in referral are referred when all applicants in the highest group have been referred, and so forth.

In general, the priority grouping was most often based upon length of employment under the agreement -- those with the longest employment getting the highest priority in referral. About one-fourth of the agreements, however, used a combination of employment under the agreement, experience in the trade, and an examination in setting up the priority groups.

GRIEVANCE PROCEDURE

The union, under an exclusive work referral agreement, is almost universally responsible for determining whether an applicant is qualified to work under the agreement, and for selecting those applicants who will be referred to an employer in response to a request for workers. Therefore, the union, within rules laid down by the agreement, controls entry into the labor pool and the distribution of employment opportunities. Since the union has such authority, it is important to know if the agreements provide a procedure by which applicants are able to challenge the union's determination of eligibility for registration, or its selection of applicants for referral.

The provisions for settling grievances in these agreements were generally of two types. The first type referred simply to grievances arising out of the application or interpretation of the agreement, and made no specific reference to grievances over registration and/or work referral. The second type, regardless of any other language, specifically made registration and/or work referral subject to the grievance procedure. In this study, only the second type of provision was included in the analysis.

On this basis, 47 of the 82 agreements analyzed were classified as providing a grievance procedure. Of these 47 agreements, 42

specified that the procedure would handle grievances over both registration and referral, 3 specified a procedure for settling grievances over registration, and 2 specified a procedure for settling grievances over referral. In all, therefore, 45 agreements contained a procedure for the settling of grievances arising over the union's determination of an applicant's eligibility for registration, and 44 had a procedure for the settling of grievances arising over the selection of applicants for referral.

A total of 45 of the 47 agreements with a grievance procedure provided for the handling of grievances by a committee. Of these 45 agreements, 26 provided for a bipartite committee of union and employer representatives, and 19 provided for a tripartite committee of union and employer representatives and an impartial person. The remaining two agreements did not follow the committee approach in handling grievances. Both provided for the reference of unsettled grievances to an arbitrator selected by the parties.

As has been noted above, 26 agreements have a bipartite committee grievance procedure. Such committees, however, may well deadlock. In 18 of these 26 agreements, therefore, there is a provision for an impartial umpire, selected by the parties to the agreement, in the event that the committee cannot reach a settlement. A Boilermakers agreement provides an illustration of this type of procedure:

"The Joint Referral Committee shall provide in the rules, and regulations of the job referral /plan/ for an appeal to an impartial umpire whenever the Joint Referral Committee reaches a deadlock over a dispute concerning a refusal to register an applicant, the proper registration or dispatching of any applicant. The impartial umpire shall be designated by mutual agreement of the parties. The authority of the impartial umpire shall be limited to interpreting and applying the rules and regulations of the Joint Referral Committee. The decision of the Joint Referral Committee or the impartial umpire shall be final, . . ." 85/

It does not appear that any study has been made of the efficacy of the grievance procedures described above. To the extent that nonmembers are refused registration or referral, some questions may arise as to the nonmembers' knowledge of the existence of the grievance procedure for, at least in one case, the NLRB found that even certain members were unaware of the procedure. 86/

In this NLRB case, Local 80 of the Plumbers had a contract with an area contractors association. The employer (Lummus Company), was not a party to this contract, but it operated in many states and, by virtue of an agreement between a national association of contractors (of which Lummus was a member) and the national union of which Local 80 was a part, it considered itself bound by the Local 80 agreement and in fact abided by the terms of the agreement. This contract provided for an exclusive union work referral system which also contained

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85/ Boilermakers I-A Field Construction Agreement, Ohio, Kentucky and West Virginia, October 1, 1966 - September 30, 1969, p. 42.

86/ See footnote 56 above on the requirements under the LMRDA as to the availability of collective bargaining agreements and referral lists to employees affected by the agreement. Note also that 55 of the 82 agreements studied provided for posting of the provisions of the agreement. (P. 32 above.)

an appeals procedure for applicants or registrants who believed that they had not received fair treatment at the hiring hall. The appeal was to the Joint Hiring Committee composed of representatives of Local 80 and the employer which, in case of a deadlock brought in an impartial umpire whose decisions were final.

Two applicants from Local 420, a sister local of Local 80, sought to register for referral for employment. The business agent of Local 80 refused to register the first applicant on the grounds that he had previously caused trouble for one of the Local 80 executive board members -- and then refused the second applicant simply because he was the brother of the first applicant. A Local 80 steward also prevented the employer from hiring one of the applicants at the work site. The applicants filed unfair labor practice charges against Local 80 and the company. The union contended, among other things, that the NLRB should not accept the case because the applicants had not availed themselves of the appeals procedure described above.

The Board found both Local 80 and Lummus guilty of violating Taft-Hartley. In so doing, it stated:

"The evidence, in our opinion, refutes the assumption that the /applicants/ had actual 'knowledge' of the appeal procedure. While the /applicants/ were long-standing union members, it seems quite clear from the record in this case that they did not know what course to pursue after being denied an opportunity to register at Local 80's hiring hall. They were, rather, denied the benefit of /the employer's/ attempted explanation through the threats of Local 80's steward."

". . . In situations like that presented in the instant case, the common interest of the employer and the union representatives could be expected to militate against the likelihood of a deadlock and thus preclude access to an impartial tribunal. Under such circumstances, we do not feel that the /applicants/ should be penalized for failing to employ such a remedy." 87/

87/ Lummus Company, 142 NLRB No. 59 (1963), 53 LRRM 1072, enf'd as to Local 80, rev'd as to Lummus, 329 F 2d 728, 56 LRRM 2425 (C.A. DC, 1964).

IV. WORK REFERRAL PROVISIONS IN NATIONAL AND SUBORDINATE BODY CONSTITUTIONS

The analysis of the 82 agreements included in this study has shown that unions are characteristically responsible for the administration of exclusive work referral systems in the construction industry and that the agreements, to some extent, specify procedures for the operation of such systems. Since unions in the construction industry characteristically administer exclusive work referral systems, it is useful to examine their constitutions in order to determine what procedures, if any, are specified for the operation of work referral systems. In addition, it is of some interest (as will be shown) to know if these constitutions prohibit members from working with nonmembers. For this purpose, the constitutions of 19 national unions with members employed in the construction industry were analyzed, 88/ along with the constitutions of 43 subordinate bodies which were signatory to agreements included in this study.

88/ The criteria used for selecting national union constitutions for analysis were affiliation with the Building and Construction Trades Department of the AFL-CIO, or, in the case of nonaffiliated national unions, having subordinate bodies signatory to key agreements which provided for exclusive work referral systems. There are 17 national unions currently affiliated with the Building and Construction Trades Department: the Asbestos Workers, the Boilermakers, the Bricklayers, the Carpenters, the Electrical Workers-IBEW, the Elevator Constructors, the Operating Engineers, the Granite Cutters, the Iron Workers, the Laborers, the Lathers, the Marble Polishers, the Painters, the Plasterers,

NATIONAL CONSTITUTIONS

In general, the national union constitutions studied had very little to say about work referral procedures. Of the 19 constitutions analyzed, 4 contained specific references to a work referral system; 5, while not containing such specific references, had provisions which are related to work referral; and 10 were completely silent on work referral.

Of the four constitutions with references to a work referral system, only the Lathers had much to say. This constitution specified that contractors entering a local union's jurisdiction were required to notify the local and request referrals:

> "A contractor . . . when going into another Local Union's jurisdiction to do work shall notify the authorized representative of the Local Union prior to starting such work, and, for the purpose of securing experienced and qualified lathers acquainted with work conditions in the area, the contractor . . . shall request the Local Union of the territory to refer such experienced and qualified lathers to such contractor . . .; provided, however, that such referral by the Local Union shall be made in accordance with any applicable law which governs or affects 'hiring' and 'referrals'. A contractor . . ., in securing such experienced and qualified lathers, shall endeavor, at the start of the job, to man the job or jobs with at least fifty percent (50%) of the men required being referred to him by the Local Union . . ." 89/

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the Plumbers, the Roofers and the Sheet Metal Workers. (Of these 17 nationals, 13 had subordinate bodies party to key agreements which provided for exclusive work referral systems; while four, the Asbestos Workers, the Granite Cutters, the Marble Polishers, and the Roofers, did not.) Two nonaffiliated nationals (District-50 and the Teamsters) had subordinate bodies signatory to key agreements which provided for exclusive work referral systems, and their constitutions were selected for analysis.

In all cases, the constitutions analyzed were the constitutions on file with the Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act, and in effect April 1, 1969.

89/ Lathers, 1967 Constitution, Sec. 198, p. 89.

Three other constitutions (the Plasterers, the Boilermakers and the Teamsters) contained only limited information on work referral. The Plasterers constitution specified that a local union may give priority in referral to applicants "who have residency and/or previous employment with contractors in agreement" with that local union. 90/ The Boilermakers constitution only specified that the Business Manager is responsible for dispatching job applicants. 91/ An indirect reference to work referral was contained in the Teamsters constitution. This constitution merely specified that local unions are required to pay per capita tax on workers who pay hiring hall fees. 92/

In 5 of the 19 national constitutions analyzed, there were no specific references to work referral, however, these constitutions had provisions which related to the furnishing of workers to employers. Three of these five constitutions (the Operating Engineers, the Granite Cutters and the Marble Polishers) specified that the union would assist employers in obtaining workers. Two constitutions (the Electrical Workers-IBEW and the Iron Workers), on the other hand, specified that local unions could refuse to furnish members to certain employers. In the Electrical Workers-IBEW, locals may refuse to furnish members to

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90/ Plasterers, 1967 Constitution, Sec. 87, p. 115.
91/ Boilermakers, 1965 Constitution, Art. XXIII, Sec. 10, p. 100.
92/ Teamsters, 1966 Constitution, Art. X, Sec. 3, p. 63.

"outside employers who have work within their jurisdiction" if such employers do not "recognize the I.B.E.W. as the collective bargaining agency on their other work." 93/ Locals of the Iron Workers may refuse to furnish members to a company "which is owned or controlled directly or indirectly by" relatives of any member of the union. 94/

SUBORDINATE BODY CONSTITUTIONS

The constitutions of subordinate bodies signatory to agreements included in this study contained more information on work referral systems than the national union constitutions studied. The table below shows the number of subordinate constitutions, by national affiliation, that make specific reference to work referral.

93/ Electrical Workers-IBEW, 1966 Constitution, Art. XVII, Sec. 14, p. 51.

94/ Iron Workers, 1968 Constitution, Art. XIX, Sec. 15, p. 57.

National affiliation 1/	Number of constitutions analyzed	Number with work referral provisions
Total	43	24
Boilermakers	2	-
Bricklayers	2	-
Carpenters	5	5
Electrical Workers-IBEW	5	5
Elevator Constructors	1	1
Engineers, Operating	7	6
Iron Workers	2	-
Laborers	7	-
Lathers	2	1
Painters	1	1
Plasterers	2	1
Plumbers	4	3
Sheet Metal Workers	2	1
Teamsters	1	-

1/ District-50 had subordinate bodies party to two agreements included in this study, however, the constitutions of these subordinates were not found in their LMRDA files in the Department of Labor.

A total of 24 of the 43 constitutions analyzed made specific reference to a work referral system. In general, these constitutions provided that the union would have the authority to establish procedures for work referral, without setting forth the actual work referral procedures. For example, the constitution of an Electrical Workers-IBEW local union specified that:

> "The handling of jobs for unemployed members shall be under the full supervision and direction of the Business Manager's office. He shall devise such means as he considers practical and fair in distributing available jobs to such members . . ." 95/

95/ Electrical Workers-IBEW, Local 6, 1969 Constitution, Art. VIII, Sec. 9, p. 23.

Similarly, the constitution of an Operating Engineers local union specified that the union was responsible, not only for operating the referral system, but also for establishing the procedures for the operation of the system. The constitution specified that:

> "The Executive Board of Local Union #18 shall have the power to prescribe the rules and regulations governing hiring hall practices consistent with the public policy and requirements of the law." 96/

Two of the 24 constitutions with references to work referral contained rather interesting provisions relating to the employment of members from other local unions. One of these constitutions, a Lathers, provided that the local union would notify a specific sister local union when it was unable to furnish members to employers. 97/ The constitution of a Carpenters local union provided that it would "insist on priority of hire and job tenure" for qualified members of a sister local union for particular jobs outside its own occupational jurisdiction. 98/

PROHIBITIONS ON MEMBERS WORKING WITH NONMEMBERS

Constitutional provisions prohibiting members from working with nonmembers could have some effect on the employment of nonmembers

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96/ Operating Engineers, Local 18, 1961 Constitution, Art. XXI, Sec. 30, p. 30.

97/ Lathers, Local Union 42-A, 1960 Constitution, p. 27.

98/ Carpenters, Local Union 1501, 1956 Constitution, Art. III, Sec. 7, p. 7.

under an exclusive work referral system if the union enforced such provisions. This would be so, since the employer might be reluctant to hire nonmember applicants, despite their referral by the union, if union members refused to work with such individuals because of such constitutional provisions.

Of the 19 national union constitutions analyzed, only 2 (the Electrical Workers-IBEW and the Plumbers) prohibited members from working with nonmembers; and in both instances the prohibitions were somewhat limited. The Electrical Workers constitution only prohibited members on withdrawal cards from working with, or employing nonmembers, on work within the union's jurisdiction. 99/ In the Plumbers, journeymen members were prohibited from working with nonmember apprentices and helpers. 100/

Provisions prohibiting members from working with nonmembers were also not common in subordinate body constitutions. Of the 43 constitutions analyzed, 5 constitutions (two Carpenters, two Bricklayers and one Plasterers) contained such provisions. 101/

These five local constitutions, unlike the two national constitutions, contained broad prohibitions on members working with nonmembers. For example, the constitution of a Carpenters local union

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99/ Electrical Workers-IBEW, 1966 Constitution, Art. XXVI, Sec. 5, p. 79.

100/ Plumbers, 1967 Constitution, Sec. 163a, p. 74.

101/ Four constitutions, all Operating Engineers, did not prohibit members from working with nonmembers, but they all specified that members would be disciplined for failing to notify the union that nonmembers were employed on a job.

specified that: "No member shall be allowed to work on any job where non-union carpenters are employed . . ." 102/ The constitution of a Bricklayers local union, similarly, specified that: "Members . . . shall not work on any job with non-union Bricklayers, Masons . . ." 103/ The constitution of another Carpenters local union did not actually prohibit members from working with nonmembers; however, the constitution did specify that members acting as foremen would be fined if they hired nonmembers, or allowed nonmembers to work with the tools of the trade. 104/

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In summary, the analysis of the national constitutions of building and construction unions and the constitutions of subordinates which are parties to exclusive work referral agreements has shown that the constitutions contained almost no information regarding work referral procedures. In addition, the analysis showed that the governing documents of these unions only rarely had prohibitions on members working with nonmembers.

102/ Carpenters, Local Union 953, 1958 Constitution, p. 23.
103/ Bricklayers, Local Union 2, Undated Constitution, Art. XXV, Sec. 2, p. 21.
104/ Carpenters, Local Union 326, 1959 Constitution, Art. XI, Secs. 6, 18, pp. 13, 15.

V. SUMMARY AND CONCLUSION

With the current emphasis on opening employment opportunities in the construction industry to minority groups, attention has been focused on the industry's traditional hiring practices in general, and exclusive work referral systems -- hiring arrangements whereby employers hire workers solely and exclusively from union sources -- in particular. Minority group leaders and some government officials have alleged that construction industry unions have used exclusive work referral systems to restrict the employment of minority craftsmen; some employer groups have maintained that shortages of skilled manpower are due, in part, to the unions' ability to limit the size of the labor pool through such hiring arrangements. Although much criticism has been levied against exclusive work referral systems in the construction industry, and much has been written in general terms about, and the legal status of, such hiring arrangements, very little study has been devoted to exploring the extent of exclusive work referral systems and the procedures established by collective bargaining agreements and union constitutions for the operation of such systems. This study has examined the extent of exclusive work referral systems in the construction industry, the procedures for the operation of such systems as provided by key construction

industry collective bargaining agreements on file with the Bureau of Labor Statistics, the constitutions of construction industry unions, and the legal status of work referral systems under Federal law.

STATUS UNDER FEDERAL LAW

Prior to the passage of Taft-Hartley in 1947, there was no Federal impediment to the closed shop and complete union control of the hiring system in the industry because the jurisdiction of the NLRB did not extend to the building and construction trades. Taft-Hartley replaced the closed shop with the union shop, and exclusive work referral systems which excluded nonmembers were outlawed. In 1959, amendments to Taft-Hartley permitted exclusive work referral systems to base referral on minimum training or experience and length of service with an employer or in the industry or geographic area. Discrimination based on membership, however, continued to be illegal. The Civil Rights Act of 1964 made illegal discrimination based on race, color, religion, sex, or national origin. The court decisions involving exclusive work referral systems which have arisen so far presage a wide revision of the system.

THE COLLECTIVE BARGAINING AGREEMENTS

Of the 291 key agreements in effect on April 1, 1969, on file with BLS, which were suitable for analysis, 132 provided exclusive work referral, 98 nonexclusive work referral, and 61 had no provision for work referral. These 291 agreements covered nearly 1 million workers. The 132 exclusive work referral agreements covered 474,650 workers. Based upon the data in this study, it is estimated that exclusive work referral agreements cover about 50 percent of the workers in the organized sector of the industry -- in absolute terms this amounts to about 1 million workers.

A total of 82 of the 132 exclusive work referral agreements were selected for a detailed analysis regarding the procedures for the operation of exclusive work referral systems. The analysis centered on four areas: 1) administration; 2) eligibility requirements and the method of determining eligibility; 3) selection procedures for referral; and 4) grievance procedures.

Administration

The union party to the agreement was almost universally responsible for all aspects of the administration of the referral system. In all 82 of the agreements, the union was solely responsible for

registering and referring applicants for employment. In regard to determining whether or not an applicant was qualified to register, the union was given the sole authority to make this determination in 70 of the 72 agreements which specified that an applicant must possess some qualifications in order to be eligible to register; in two agreements the employer and the union made this determination jointly. (Ten agreements were completely silent regarding the qualifications required of applicants.)

Eligibility Requirements and the Method of Determining Eligibility

In 72 of the 82 agreements analyzed, an applicant was required to possess minimum qualifications in order to be eligible to register for referral. Nearly all of these 72 agreements required some experience or training to qualify applicants for registration for employment. Less than half of these agreements used "objective" criteria, in that they specified a level of experience or training, i.e. a definite number of years of experience or completion of an apprenticeship. More than half, however, used "subjective" criteria, in that while some experience or training was required for registration, the level of the training or experience was not specified. In regard to determining whether an applicant possessed the required qualifications, 37 of the 72 agreements with minimum qualifications prescribed a method to be followed in making the determination, and in all but two cases the procedure was administered by the union. The 35 other

agreements did not specify any procedure for making the determination of eligibility for registration.

Selection Procedures for Referral

All of the 82 agreements gave the union the responsibility for selecting applicants for referral. Of these 82 agreements, 51 provided that the union was to follow a specific procedure in selecting applicants, and 31 did not. The typical procedure specified by the 51 agreements was that applicants would be referred to jobs on the basis of their date of registration.

A total of 34 of the 51 agreements with selection procedures, and 12 of the 31 agreements without selection procedures provided for the division of applicants into groups with separate priorities in referral. In these 46 agreements which divided the registrants into priority groups, applicants in the highest group are referred first, then applicants in the second group, and so forth. Within any one group, applicants are referred to jobs according to the stated procedure, if any. Of the 46 agreements which arranged applicants into various priority groups, 20 did so on the basis of the length of previous employment with employers signatory to the agreement, and 12 based the priority group classifications on such qualifications as length of experience and examinations in addition to length of previous employment under the agreement.

Grievance Procedures

Of the 82 agreements analyzed, 47 provided a procedure for settling grievances involving the referral system and 35 did not. Of the 47 agreements with such a grievance procedure, 26 provided for the settling of grievances by a bipartite committee composed of employer and union representatives, and 18 of the 26 also provided for an impartial umpire if the committee deadlocked. A tripartite committee composed of employer and union representatives and an impartial member was provided in 19 of the cases.

THE UNION CONSTITUTIONS

The constitutions of 19 national unions with members employed in the building and construction industry, and the constitutions of 43 subordinate bodies party to key agreements included in this study were examined for provisions relating to work referral procedures and prohibitions on members working with nonmembers. The constitutions contained almost no information on work referral procedures, and they only rarely contained clauses prohibiting members from working with nonmembers. Of the 19 national union constitutions, 4 made a specific reference to work referral (only one of the four contained any detail regarding a work referral procedure); and of the 43 subordinate body constitutions, 24 made a specific reference to work referral (none of the 24 provided any detail regarding work referral procedures). Clauses

prohibiting members from working with nonmembers were found in two national constitutions and in five subordinate body constitutions.

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In brief: (1) Exclusive union work referral systems are legal under Federal law provided that they actually operate in a nondiscriminatory fashion as to union membership or nonmembership under Taft-Hartley, and do not in practice violate the provisions prohibiting other types of discrimination under the Civil Rights Act of 1964. (2) These systems are widely used in the construction industry and cover approximately 1 million workers. (3) The unions are almost universally solely responsible for the administration of these systems. (4) Nearly all the collective bargaining agreements set forth minimum qualifications for those who wish to register for employment, but less than half provide objective criteria. (5) In selecting those who are to be referred to particular jobs, over one-third of the agreements did not provide any specific procedures to be followed; the balance used a variety of procedures. (6) More than half of the agreements provided a grievance procedure to settle disputes involving the work referral system. (7) Despite its importance to the unions, the union constitutions provide little material on the procedures or standards for the operation of the work referral systems.

The exclusive union work referral system is an important, but still just one part of the entire employment and industrial relations system in the building and construction industry. Although much of the current attention directed to the union-controlled work referral system stems from the problem of expanding minority employment in the industry, this system along with the related systems of apprenticeship and admission policies of these unions long pre-dates any widespread concern over minority employment. Nevertheless, in terms of minority employment and in terms of recurrent shortages of skilled labor in the industry, the question is being raised as to the ability of the industry's employment system to meet the demands of the law as to non-discrimination, changes or projected changes in the technology of the industry, and the needs of the nation in terms of housing and other construction, without drastic changes in the traditional system of training and employment.

APPENDIX

SHORT FORM TITLES AND FULL NAMES
OF NATIONAL UNIONS INCLUDED IN THE STUDY

Short form	Full name
Asbestos Workers	Asbestos Workers; International Association of Heat and Frost Insulators and (AFL-CIO)
Boilermakers	Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Brotherhood of (AFL-CIO)
Bricklayers	Bricklayers, Masons and Plasterers' International Union of America (AFL-CIO)
Carpenters	Carpenters and Joiners of America; United Brotherhood of (AFL-CIO)
District 50 (Ind.)	District 50; International Union of (Ind.) 1/
Electrical Workers-IBEW	Electrical Workers; International Brotherhood of (AFL-CIO)
Elevator Constructors	Elevator Constructors; International Union of (AFL-CIO)
Engineers, Operating	Engineers; International Union of Operating (AFL-CIO)
Granite Cutters	Granite Cutters' International Association of America (AFL-CIO)
Iron Workers	Iron Workers; International Association of Bridge, Structural and Ornamental (AFL-CIO)
Laborers	Laborers' International Union of North America (AFL-CIO)
Lathers	Lathers International Union; The Wood, Wire and Metal (AFL-CIO)

1/ Name changed to International Union of District 50, Allied and Technical Workers of the United States and Canada (Ind.), effective April 9, 1970.

Short form	Full name
Marble Polishers	Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters' Helpers and Marble Mosaic and Terrazzo Workers' Helpers; International Association of (AFL-CIO)
Painters	Painters, Decorators and Paperhangers of America; Brotherhood of (AFL-CIO) 2/
Plasterers	Plasterers' and Cement Masons' International Association of the United States and Canada; Operative (AFL-CIO)
Plumbers	Plumbing and Pipe Fitting Industry of the United States and Canada; United Association of Journeymen and Apprentices of the (AFL-CIO)
Roofers	Roofers, Damp and Waterproof Workers Association; United Slate, Tile and Composition (AFL-CIO)
Sheet Metal Workers	Sheet Metal Workers' International Association (AFL-CIO)
Teamsters (Ind.)	Teamsters, Chauffeurs, Warehousemen and Helpers of America; International Brotherhood of (Ind.)

2/ Name changed to International Brotherhood of Painters and Allied Trades, effective January 1, 1970.

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