

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: June 18, 2003

TO : Cornele A. Overstreet, Regional Director
Michael J. Karlson, Regional Attorney
Gordon Jorgenson, Assistant to the Regional Director
Region 28

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Arizona Pipe Trades Health and Welfare Fund,
et al. and Local 741, Plumbers
(Air Conditioning Maintenance Co.)
Case 28-CB-5918

This Bill Johnson's¹ case was submitted for advice as to whether the Union and the Trust Funds' lawsuit against the Employer to collect fund contributions and dues for a period of time during which the Employer had not signed a Union collective-bargaining agreement violates Section 8(b)(1)(a) and (2). We agree with the Region that the charge should be dismissed, absent withdrawal, because there is no evidence that the suit is retaliatory against, or interferes with, employee Section 7 rights.

Briefly, the Employer had been a member of an association and party to a 1996-1999 multi-employer Section 8(f) collective-bargaining agreement between the Association and the Union, which provided for Employer contributions to the Trust Funds and for Employer remittance of dues check-off to the Union. The Employer timely withdrew from the association prior to negotiation of the 1999-2002 agreement; despite repeated requests by the Union, the Employer did not become signatory to that successor agreement.

Upon expiration of the prior agreement in 1999, the Employer generally ceased making fund contributions and dues check-off remittances on behalf of unit employees. The Employer did, however, continue to make certain fund contributions for 4-5 of its 25 employees performing bargaining unit work, at the request of an employee on behalf of himself and those other employees who were close to vesting in the fund benefits. The Employer also

¹ Bill Johnson's Restaurants v. NLRB, 461 U.S. 731 (1983).

occasionally utilized the Union to obtain employee referrals for short-term openings.

After the expiration of the 1999-2002 agreement, the Trust Funds and the Union filed suit against the Employer, seeking some \$323,000 for fund contributions allegedly owing for the life of that agreement, and some \$19,000 for Union dues check-off. The suit did not seek to bind the Employer to an agreement, did not seek to impose the Union as the representative of the Employer's employees, and did not seek dues from employees. The Employer denied that it was bound by the 1999-2002 agreement, and counterclaimed for return of mistaken payments to the Funds or, alternatively, for unjust enrichment.

We concluded that the charge should be dismissed, absent withdrawal, because the suit against the Employer alone for monetary payments and damages is not retaliatory against, and does not interfere with, employee Section 7 rights. See Slate Workers Local 66 (Sierra Employees Association), 267 NLRB 601, 602-03 (1983) (union did not violate 8(b)(1)(A) by filing suit against employer for abuse of process, based on employer having filed Board charges). We note that the suit does not seek to bind either the Employer, or employees, to obligations to recognize the Union or to support it in the future.

B.J.K.