

Writers Guild of America, West, Inc (Alliance of Motion Picture and Television Producers) and Edward Anhalt and William Blinn and Bob Booker and Frank Cardea and Lionel Chetwynd and L. Travis Clark and Robert Collector and Thomas Donnelly and Rift Fournier and Michael Robert (Bob) Gale and Dan Gordon and Bruce Johnson and Neal Marshall and Mike Marvin, and David Milch and Judith Paige Mitchell and Larry Mollin and George Schenck and Stuart Sheslow and Robert Singer and Michael A. Zanberg Cases 31-CB-7705-1 through 31-CB-7705-21

October 19, 1989

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On March 29, 1989, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Parties filed an answering brief, cross-exceptions, and a brief in support of the cross exceptions, and the Respondent filed an opposition to the Charging Parties' cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Writers Guild of America, West, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ In adopting the judge's finding of a violation of Sec. 8(b)(1)(A) regarding art. X Discipline of the Respondent's constitution and bylaws and in adopting his recommended Order, we rely specifically on the reference in that article to the imposition of fines. We find it unnecessary to decide whether the maintenance of the other disciplinary measures provided for in that article also violates the Act because the issue of the distinction among the various forms of discipline was not fully litigated by the parties.

Raymond M. Norton Esq. for the General Counsel
Julius Reich and Anthony R. Segall Esqs. (Reich Adell & Crost) of Los Angeles, California for the Respondent
Bradley T. Raymond Esq. of Southfield, Michigan for the Charging Parties

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Each of the charges in the aforementioned cases was filed on July 14, 1988, by the various individual Charging Parties. The charges were amended on August 26, 1988. Thereafter, on August 31, 1988, the Acting Regional Director for Region 31 of the National Labor Relations Board (the Board) issued an order consolidating cases, consolidated complaint and notice of hearing alleging a violation by Writers Guild of America West, Inc. (Respondent) of Section 8(b)(1)(A) of the National Labor Relations Act (the Act).

Thereafter, on December 20, 1988, the parties filed a joint motion to waive hearing and transfer proceedings to the Division of Judges. On December 21, 1988, the acting associate deputy chief administrative law judge issued an order transferring stipulated record to the administrative law judge and setting date for filing of briefs. Briefs timely filed, have been received from the General Counsel, counsel for Respondent, and counsel for the various Charging Parties.

On the entire record and consideration of the briefs submitted, I make the following:

FINDINGS OF FACT

I JURISDICTION

The Alliance of Motion Picture and Television Producers (AMPTP) is now, and has been at all times material herein, an association comprised of various employers with principal offices and places of business in the State of California where they are engaged in the production of motion pictures for television and theatres. AMPTP exists for, engages in, collective bargaining for and negotiates and executes collective bargaining agreements on behalf of its employer members with various organizations, including the Respondent herein.

The employer members of AMPTP, in the course and conduct of their business operations, annually purchase goods and services valued in excess of \$50,000 directly from firms located outside the State of California.

It is admitted and I find that the employer members of AMPTP are now, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

A The Issues

The principal issues in this proceeding are whether certain provisions incorporated in the Respondent's constitution and bylaws place unlawful restrictions on the right of Respondent's members to resign their member

ship, and unlawfully subject them to discipline for conduct occurring subsequent to their resignation

B *The Facts*

The Respondent's constitution and bylaws contain, inter alia, the following provisions

ARTICLE IV, SECTION 8 RESIGNATION

By accepting membership in the Guild members agree that the continuation of membership status and the applicability of discipline to all members, especially during times of negotiation with employers or during strikes by the Guild, is essential to their welfare and necessary for solidarity and to achieve the objectives of the Guild, and that resignation during or shortly preceding a strike by the Guild shall not relieve a member of his/her obligations during the duration of such and related strikes to observe the Guild's strike rules as applied to any employer and to honor any primary picket line established by the Guild. Each member therefore agrees with the other members to be subject to discipline pursuant to Article X, and as follows

a Only members who are in good standing and who are not indebted to this Guild may tender their resignation from the Guild,

c If a member tenders his/her resignation after commencement of collective bargaining between the Guild and one or more employers, and within twenty-one (21) days prior to the expiration date of the then current and applicable collective bargaining agreement, and if a strike occurs within twenty-one (21) days of the expiration of said collective bargaining agreement, or if a member tenders his/her resignation during a strike in the industry or in a segment of the industry in which the member during the term of the collective bargaining agreement is or seeks to be employed, or to which the member made sales or licensed literary materials or seeks to make sales or license literary materials, his/her resignation shall not relieve the member or his/her obligation to observe the Guild strike rules and a primary picket line of the Guild for the duration of such and related strikes, and such member shall remain subject to Article X (Discipline) for the duration of such and related strikes. For purpose of this section "related strike" means a strike which, during the strike in which the member resigned or which occurred within twenty-one (21) days of the member's resignation, commences against another employer or employers in the same segment of the industry

ARTICLE X Discipline

A GROUNDS

Any member who has resigned as described in Article IV, section 8, Paragraph c, who shall be

found guilty, after a hearing in accordance with the procedures herein prescribed, of crossing a primary picket line of the Guild or of any act or failure to act, or any conduct which is prejudicial to the welfare of the Guild or of unfair dealing with another member of the Guild, or with an employer or purchaser or licensee of his/her material, or of failing to observe the Constitution and By-Laws of this Guild, or any work rules or strike rules of the Guild, or any lawful order of the Board, or of failing to abide by the requirements of any Minimum Basic Agreement or Code of Fair Practice to which the Guild is party, may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign or in lieu thereof, or in addition thereto, he/she may be censured, fined or otherwise disciplined

The parties have stipulated to additional facts, as follows

1 From on or about March 7, 1988, to on or about August 7, 1988, Respondent was on strike against various employers in the television and theatrical motion picture industry, including employer-members of AMPTP, in furtherance of a primary labor dispute

2 Of the 21 Charging Parties, 1 joined the Guild in 1946, 4 joined in the 1960s, 9 joined in the 1970s and 7 joined in the 1980s prior to 1988, and none of them has, at any time material herein resigned or attempted to resign from the Guild, nor has the Guild disciplined or attempted to discipline any of the Charging Parties for so doing, or for actual or purported violations of the Constitutional provisions set forth at paragraph 7 above

3 Prior to the time that they filed the unfair labor practice charges herein the Charging Parties were advised by their legal counsel that Respondent's Constitutional provisions, set forth above, are unlawful and unenforceable

4 At no time did any of the Charging Parties attempt to work within the Guild's established procedures to change or eliminate the Constitutional provisions set forth above

C *Analysis and Conclusions*

In *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), the Board applied a per se rule governing the right of a member to resign from a union, and held "that any restrictions placed by a union on its member's right to resign are unlawful" Id at 1333. Therefore it is clear that under current Board law the restriction upon resignation embodied in Respondent's constitution and bylaws, article IV, section 8, Resignation, and paragraph "a" thereof, which provides that "only members who are in good standing and who are not indebted to this Guild may tender their resignation from the Guild" is impermissible

Paragraph c of article IV, section 8, Resignation, and the related article, article X, Discipline, constitute an attempt to retain sanction authority over a member who

has tendered his or her resignation or who has resigned, and permits the postresignation levying of fines or other discipline against the member. Such provisions are similarly unlawful. Thus, the Board in *Neufeld*, supra at 1336, stated that "it is no answer to say that an employee is free to resign so long as he or she is 'willing to pay the price,' because a 'right' to act, but at the risk of a debilitating fine, is no right at all."

Recognizing the foregoing applicable principles of law, the Respondent, in its brief, has formulated an analysis of the issues herein in support of its argument that the Board should reconsider its policy in this area, and correctly suggests that these matters should appropriately be addressed to the Board. I deem it unnecessary to discuss the Respondent's arguments or make recommendations in this regard, as the applicable current Board law is clear.

On the basis of the foregoing, I find that the Respondent has violated the Act as alleged *Pattern Makers League v NLRB*, 473 U.S. 95 (1985), *Machinists Local 1414 (Neufeld Porsche-Audi)*, supra, *Oil Workers (Texaco Refining)*, 283 NLRB 2 (1987).

CONCLUSIONS OF LAW

1 The employer-members of the Alliance of Motion Picture and Television Producers are employers engaged in commerce and in businesses affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2 The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3 The Respondent has violated Section 8(b)(1)(A) of the Act as alleged.

THE REMEDY

Having found that the Respondent has engaged and is engaging in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, it is recommended that the Respondent be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. Specifically, it is recommended that the Respondent cease and desist from maintaining the restrictive provisions on resignations and postresignation discipline found invalid herein, and expunge the provisions from its constitution and bylaws *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311 (1983).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation¹

ORDER

The Respondent, Writers Guild of America, West, Inc., Los Angeles, California, its officers, agents, and representatives, shall

1 Cease and desist from

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Maintaining in its constitution and bylaws the provisions set forth in article IV, section 8, Resignation, and paragraphs "a" and "c" thereof, and article X, Discipline, and section A, Grounds, thereof.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2 Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Expunge from its constitution and bylaws the provisions set forth in article IV, section 8, Resignation, and paragraphs "a" and "c" thereof, and article X, Discipline, and section A, Grounds, thereof.

(b) Post at its business offices and meeting halls copies of the attached notice marked "Appendix"². Copies of the notice to be provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT continue to maintain in our constitution and bylaws those articles and provisions which restrict the right of members to resign from the Guild and which provide for the levying of postresignation fines or other discipline. It has been determined that article IV, section 8, Resignation, and paragraphs "a" and "c" thereof, and article X, Discipline, and section A, Grounds, thereof, impose unlawful restrictions on the right of members to resign from this labor organization.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL expunge from our constitution and bylaws those portions specified above.

WRITERS GUILD OF AMERICA, WEST, INC.