

automatically loses membership status. Kirby admittedly did not renew his status during the ten day period.

We conclude, in agreement with the Region, that the International's refusal to allow Kirby to appeal the decision not to take his grievance to an umpire, because of Kirby's nonmember status, violated Section 8(b)(1)(A).² We also conclude that the allegation against the Local should be dismissed, and that Article 33 of the International Constitution is not unlawful on its face and the instant violation consists of the International's discriminatory enforcement of that provision.

It is well settled that a Section 9(a) representative union may not discriminatorily refuse to represent nonmembers equally.³ This includes union decisions to take grievances to arbitration.⁴ In OCAW, Local 5-114, the union procedure for deciding whether to take a grievance to arbitration involved voting at a union membership meeting. The Board held that the union unlawfully refused to allow a nonmember to attend a meeting in order to seek members votes to arbitrate the nonmember's grievance: "This disparate treatment of a nonmember was arbitrary and discriminatory, and inherently destructive of important employee rights and violated Section 8(b)(1)(A) of the Act..." Id. at 743.

OCAW, Local 5-114 essentially controls the instant case: the International's refusal to allow Kirby to appeal the decision not to take his grievance to arbitration, solely because of Kirby's nonmember status, was unlawful. We agree that the Region should dismiss the allegation against the Local because it took no part in the International's discriminatory conduct. We also agree that Article 33 of the International Constitution should not be

² It appears that the International is the Section 9(a) representative.

³ See, e.g., NALC, Letter Carriers Branch 233 (USPS), 311 NLRB 541 (1993).

⁴ See OCAW, Local 5-114 (Colgate-Palmolive Co.), 295 NLRB 742 (1989).

attacked as unlawful. That provision merely accords appeal rights to members; it does not per se disallow appeal rights to nonmembers. Therefore, the Region should allege only that the International's interpretation of that provision to deny appeal rights to nonmembers violated the Act.

B.J.K.