

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

Advice Memorandum

DATE: June 16, 1999

TO: Robert H. Miller, Regional Director
Region 20

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

SUBJECT: Screen Actors Guild (ERA Film Brussel)
Cases 37-CB-1374, -1388

536-2561
536-2581-3307
536-5025-3300
548-4020-6000
548-6040-2550
548-6040-2550-2500
548-6040-2550-7500
548-6050-3325
548-6050-3393

These Section 8(b)(1)(A) and 8(b)(2) cases were submitted for advice on the issues of whether a union-security clause was unlawful because it granted a single 30-day grace period which started to run when the employee was first employed in the industry. [FOIA Exemption 5 .]

FACTS

About 1960, the Charging Party, an actress, became a member of Screen Actors Guild, hereinafter SAG. She ceased working as an actress about 1991. In 1992 or 1993, the Charging Party permitted her membership in SAG to lapse in circumstances where she thought that she had successfully entered withdrawal status, but in fact had not. On May 8, 1998, she auditioned for a one-day job with ERA Film Brussel (the Employer), the work to occur on June 20. On May 23, the Employer offered her the job. Pursuant to its contract with SAG, the Employer sought clearance from SAG to employ the Charging Party. SAG then objected to the Charging Party's employment because her union membership had long been terminated because of her dues arrearages. About June 4, the Charging Party spoke with the SAG agent, who told her that she could not work unless she paid to SAG the sum of \$559 as a new initiation fee and \$42 in advance

for six months dues.¹ Despite SAG's objection and its threat of a fine for violating the union-security clause, the Employer permitted the Charging Party to work, but she has refused to pay any money to SAG.

The Region has found the Employer to be a signatory to a SAG contract on a single-employer basis. The union-security clause in the SAG collective-bargaining agreement, as set forth below, states, and the practice of the parties was, that performers get one 30 calendar day grace period, which begins the first day the performer works in the motion picture industry. The pertinent language of the union-security clause is as follows:

C. The foregoing subsections A. and B., requiring as a condition of employment membership in the Union, shall not apply until on or after the thirtieth day following the beginning of such employment or the effective date of this Agreement, whichever is the later; the Union and the Producers interpret this sentence to mean that membership in the Union cannot be required of any performer by a Producer as a condition of employment until thirty (30) days after his first employment as a performer in the motion picture industry; "first employment" meaning the first employment as a performer in the motion picture industry on or after August 10, 1948....

The union-security clause further states that this arrangement was sanctioned by the Office of the General Counsel 50 years ago, in 1948.

ACTION

The Region is authorized to issue complaint, absent settlement, alleging that it was unlawful for SAG to condition the commencement of the Charging Party's employment on her payment of a reinitiation fee before she had been employed by the Employer for 30 days because the Employer's performers are a separate bargaining unit.

We first concluded that there was nothing unlawful about SAG's termination of the Charging Party's membership in 1992 or 1993. A union is free to terminate a member's membership for nonpayment of dues. Even assuming that SAG was derelict in failing to grant the Charging Party

¹ The SAG dues structure is monthly dues of \$7 plus working dues calculated as a percentage of salary.

withdrawal status, there is no evidence that the negligence rose to the standard of a violation of the duty of fair representation.

Nor was it unlawful for SAG to demand a new initiation fee from the Charging Party as a condition of employment. It is well established that a union may charge former members reinstatement fees as a condition of employment where there is a valid union-security clause. See Trico Workers Union (Trico Products Corp.), 246 NLRB 514, 515 (1979), citing Food Machinery & Chemical Corporation, 99 NLRB 1430 (1952).

Nor did the Union violate its duty of fair representation by failing to inform the Charging Party of the precise amount of her dues delinquency. In Philadelphia Sheraton Corporation, 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir. 1964), the Board held, at 896, that employees subject to a union-security clause are entitled to be told the amount of their dues and when such payments are to be made. The court said, 320 F.2d at 258, that the union was subject to a fiduciary duty. But where, as here, the union member's dues delinquency occurred while the union member was unemployed and not subject to a union security clause, Philadelphia Sheraton is not applicable. Indeed, when the Union invoked the union security clause it was not seeking back dues but only an initiation fee and future dues. Further, we cannot otherwise say that the content of the Union's notice of the Charging Party's membership dues delinquency was inadequate, that the two weeks SAG granted the Charging Party to pay up her financial obligation was unduly short, that the reinitiation fee was excessive or discriminatory, or that the requirement that a member pay dues for six months in the future was improper.²

However, it was unlawful for SAG to condition the commencement of the Charging Party's employment with the

² See Chisholm-Ryder Co., 94 NLRB 508 (1951), supplemental decision, 96 NLRB 1134 (1951), where the Board found that an employee, having joined the union late in the month, was obligated to pay dues for the entire month, even though the employee's 30-day grace period encompassed part of the month, and also stated that all that the Act requires is that dues be uniformly required. Assuming uniformity, there is nothing in the Act that prevents a union from requiring dues to be paid in advance and that the period for which dues must be paid be more than one month.

Employer on her payment of a reinitiation fee before she had been employed 30 days even though the Charging Party had previously worked in the motion picture industry. She was entitled to a grace period of 30 calendar days from the date she started to work to pay the sums involved.

As noted, the Region has concluded that the performers employed by the Employer are a separate single employer unit. In Local 644, IATSE (King-Hitzig Productions), 259 NLRB 1415, 1418 (1982), the union-security clause covering cameramen provided a single grace period after an employee's "first employment," defined as

the first such employment for producers under contract with Local 644 on or after the execution of this agreement.

The ALJ found that individual cameramen customarily work for a number of employers; but, because there was no evidence of the existence of a multiemployer unit such as might justify a single grace period, for any cameraman who had worked a total of 30 days for other producers, the union-security clause was tantamount to a closed shop.³ The Board specifically agreed with the ALJ's conclusion that the union violated Section 8(b)(1)(A) by maintaining the union-security clause. See 259 NLRB at 1416. Where, as here, the Employer is not part of a multiemployer bargaining unit, the Charging Party's prior employment in "the motion picture industry," as that term is used in the union-security clause, did not deprive her of the statutory grace period to which she was entitled when she started to work for Film Brussel. Therefore, SAG acted unlawfully by trying to condition the Charging Party's employment on her pre-employment compliance with the union-security clause.

[FOIA Exemption 5

³ The example given by the ALJ suggests that he was thinking of a grace period of 30 working days. The grace period is 30 calendar days. Building Materials & Dump Truck Drivers Local 420 (Zaich), 132 NLRB 1044 (1961); State Packing Company, 137 NLRB 1420 (1962); George C. Foss Co., 270 NLRB 232 (1984).

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B.J.K.

⁴ [FOIA Exemption 5

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⁵ [*FOIA Exemption 5*

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