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

Advice Memorandum

DATE: August 24, 1998

TO : Curtis A. Wells, Regional Director
Region 15

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

SUBJECT: NOSSA-ILA/ AFL-CIO Royalty Escrow Account
New Orleans, Louisiana
Case No. 15-CA-14820

International Longshoremen's Association,
Local 3000
New Orleans, Louisiana
Case No. 15-CB-4460

548-6030-3335
548-6075-5000
548-6090
712-5042-3355
712-5042-6783-7500

This case was submitted for advice as to whether the Union, acting through its trustee of a pension and welfare fund, and the Employer fund violated Section 8(b)(2) and 8(a)(1) and (3) by terminating a fund employee in order to replace him with a Union officer.

FACTS

The NOSSA-ILA Royalty Escrow Account (the Employer) is a trust fund created by a collective bargaining agreement entered into in 1974 by various ILA locals, including Local 3000 (the Union), and a multi-employer bargaining association of stevedore employers (NOSSA). The fund is administered by trustee representatives of management and the unions who are called principals. At all material times, Union President Irvin Joseph has served as a principal of the fund.

The fund employs two compliance investigators, whose work is supervised by the principals. The compliance investigators are not represented by a union. The collective bargaining agreement provides that "in the event any of the principals advises the administrator in writing

of a withdrawal of confidence in the performance of an investigator, such investigator shall immediately be relieved of his position and another investigator will be selected . . . ."

Louis Farrar (the Charging Party), a long-time member of the Union, was employed as a compliance investigator from February 28, 1989 to February 4, 1998. In June 1997, Local 3000 President and fund principal Joseph approached Farrar and told him that he would have to be replaced as compliance investigator because the Union was strapped for funds and needed to save its Recording Secretary's $75,000 per year salary by placing that officer in the compliance investigator position. Farrar refused to resign. The Union made additional requests for Farrar's resignation on two other occasions in November 1997, and Farrar continued to refuse to resign.

By letter dated January 26, 1998, Joseph informed his fellow principals that he "had lost confidence in the performance of Mr. Louis Farrar." Farrar was terminated on February 4, 1998, and replaced with Union Recording Secretary Ralph Walker.

The investigation revealed no evidence that the Charging Party had ever engaged in dissident intra-union activity or that the Union was motivated by animus against the Charging Party. The Employer and Union assert, inter alia, that: (1) the Union cannot be liable for actions taken by a fund trustee, (2) the Union's action was taken for the legitimate purpose of preventing the depletion of the Union treasury and not with any discriminatory motive, and (3) the replacement of a non-dissident Union member with another Union member did nothing to encourage membership or activities on behalf of a labor organization.

ACTION

We conclude that the Region should issue a Section 8(b)(2) and 8(a)(1) and (3) complaint absent settlement.

With regard to the Union's liability for fund principal Joseph's actions, the Region has correctly determined that his actions were undertaken in furtherance

of Union interests, rather than the interests of the fund, and therefore can be imputed to the Union.[1]

With regard to the merits of the alleged violations, the Union and Employer discriminated[2] against Farrar based upon Section 7 activity in that the Union admittedly had Farrar terminated by the Employer for no reason other than to permit a Union officer to take Farrar's job.[3] Thus, the Union and Employer discriminated against Farrar in such a way as to encourage activities on behalf of a labor organization.[4] Discrimination along Section 7 lines is unlawful regardless of whether the Union specifically intended to thereby encourage Union activities and regardless of the fact that the Union engaged in the discrimination for financial reasons rather than because of personal animosity.[5]

Accordingly, the Region should issue complaint absent settlement.

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[1] See SEIU Local 1-J (Shor Co.), 273 NLRB 929, 931 (1984).

[2] It appears the Employer was aware of the reason for the removal when it acquiesced in the removal.

[3] See SEIU Local 1-J (Shor Co.), 273 NLRB at 930 (Union violated Section 8(b)(2) when fund trustee, acting as the Union's agent, suspended employee's health plan coverage because she had filed a decertification petition).

[4] See Dairylea Cooperative, Inc., 219 NLRB 656, 657-658 (1975) (maintaining and enforcing contractual clause that provides benefits to union stewards over rank and file members unlawfully encourages union activities).

[5] See Local 18, Operating Engineers, 204 NLRB 681, 682 (1973). We note, moreover, that the Union did not have to have Farrar terminated in order to save the money being expended on its Recording Secretary's salary; it could have just eliminated that position and Walker could have returned to the unit or found other employment.

B.J.K.