

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

Advice Memorandum

DATE: December 13, 2010

TO: Willie L. Clark, Jr., Regional Director
Region 11

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

SUBJECT: International Brotherhood of Electrical
Workers, Local Union No. 26
Case 11-CB-4184

536-5025-6700
536-5050-3365
536-5075-0150-2500
536-5075-5017-7600-8300

This case was submitted for advice as to whether the IBEW, Local Union No. 26, violated Sections 8(b)(1)(A) and 8(b)(2) of the Act when it offered to reduce a lawfully-imposed fine from \$10,000 to \$1,000 if the Charging Party, an employer-member, agreed to sign a minority collective-bargaining agreement.

We conclude that the Union did not violate Section 8(b)(1)(A) because it was entitled to discipline the Charging Party for violating the Union's internal rules and regulations, and because its offer to reduce the fine if the Charging Party signed a minority contract did not coerce employees. The Section 8(b)(2) claim fails because there is no evidence that the Union attempted to cause the termination of the Charging Party's nonunion employees.

FACTS

The Charging Party joined the Union as an employee member in or around 1995. That same year, he began his own business, Southern State Electric, a small electrical repair shop that services primarily residential homes. Although he was self-employed, the Charging Party retained his union membership from 1995 through mid-year in 2010 so that if he ever relocated, he could transfer his membership and seek work through a sister local. The Charging Party, (hereafter "Employer-Member"), paid his membership dues annually, but did not actively participate in union activities.

The Employer-Member employs three workers at Southern State Electric: two technicians and an administrative employee. His business services 500 to 1,000 calls per year, and each call generates approximately \$50 to \$2,000 in revenue.

In October 2009, the Employer-Member parked his work truck, which displays his company logo, at a local community college where he was attending classes. He purposely parked the truck in plain sight because the truck provides free advertising for his company. One day after class, an official from the Union called the Employer-Member and questioned him about his line of work. The Employer-Member told the union official that his business did not conduct commercial work, and questioned why the Union singled him out when other big nonunion electrical companies worked in the same area. The man told him he was being questioned because he was a union member. Sometime shortly thereafter, a union business card was placed on the Employer-Member's truck while it was parked at his office.

In November of 2009, the Employer-Member received a copy of an internal union charge filed by a business representative of the Union. The charge alleged that the Employer-Member violated the Union's constitution by owning a non-signatory company. The charge alleged that the Employer-Member violated Sections 1(e) and (f) of Article 25 of the Union's constitution, which provide:

Any member may be penalized for committing any one or more of the following offenses:

(e) Engaging in any act or acts which are contrary to the member's responsibility toward the IBEW, or any of its LUs, as an institution, or which interfere with the performance by the IBEW or a LU with its legal or contractual obligations;

(f) Working for, or on behalf of, any employer, employer-supported organization, or other union, or the representatives of any of the foregoing, whose position is adverse or detrimental to the IBEW.

By letter dated January 5, 2010,¹ the Union notified the Employer-Member that it would hold a hearing before the Trial Board on February 4, where he would have an opportunity to answer the charge filed against him. The Employer-Member did not attend the February 4 hearing.

By letter dated February 8, the Union notified the Employer-Member that the Trial Board found him guilty of both counts. The Union fined him \$5,000 per count for a total of \$10,000, but offered to rescind 90% of the fine if

¹ All dates hereafter are in 2010.

the Employer-Member signed a contract with the Union. The letter stated: "[t]he fine will be reduced to a total of one thousand dollars (\$1,000) if Southern State Electric signs an Inside Wireman Agreement with IBEW Local 26, before April 1, 2010." The Union did not present the Employer-Member with any evidence that a majority of his employees desired union representation.

The February 8 letter detailed the Employer-Member's appeal rights and the proper appeal procedures. The Employer-Member failed to file an appeal that comported with Union rules. It instead filed this unfair labor practice charge.

ACTION

We conclude that the charge should be dismissed, absent withdrawal. The Section 8(b)(1)(A) claim fails because under NLRB v. Allis-Chalmers Mfg. Co.,² a union may discipline members who violate the union's internal rules and regulations and, pursuant to NLRB v. Teamsters Local 639 (hereafter Curtis Brothers),³ a union may attempt to persuade an employer-member to sign a minority contract without violating Section 8(b)(1)(A). The Section 8(b)(2) claim fails due to a lack of evidence that the Union attempted to cause the termination of the Employer-Member's nonmember employees.

I. THE UNION DID NOT VIOLATE SECTION 8(b)(1)(A).

Section 8(b)(1)(A) makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights guaranteed under Section 7. But Section 8(b)(1)(A) does not impair the right of a union to prescribe rules and regulations for its members. To the contrary, a union may "enforce any properly adopted rule that reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule."⁴

² 388 U.S. 175 (1967).

³ 362 U.S. 274 (1960).

⁴ Scotfield v. NLRB, 394 U.S. 423, 430 (1969), see Allis-Chalmers, 388 U.S. at 181 ("Integral to [] federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership.").

One type of discipline that a union may reasonably impose is a fine, and Section 8(b)(1)(A) does not prohibit a union from fining its members for violations of internal union rules.⁵ A union may also fine an employer-member for failing to be a signatory to a union contract.⁶ And as long as the fine is lawful, the Board may not inquire into the reasonableness of the amount of the fine.⁷

Here, it is undisputed that the Union could lawfully fine the Employer-Member because the Employer-Member violated Union internal rules. The question is whether the Union's offer to reduce the fine in exchange for the Employer-Member's agreement to sign a minority contract restrained or coerced his employees in the exercise of their Section 7 rights.

We conclude that the Union did not violate Section 8(b)(1)(A), even though it was attempting to persuade the Employer-Member to sign a minority contract.⁸ The Board rarely applies Section 8(b)(1)(A) to conduct directed at employers because the provision protects employees, not employers.⁹ Although the Union's efforts, if successful,

⁵ Allis-Chalmers, 388 U.S. at 191-92 (1967) (finding no Section 8(b)(1)(A) violation when a union threatens to and imposes fines and brings a suit for collection of fines against members who crossed the union's picketline and went to work during an authorized strike against their employer).

⁶ Plumbers Local 589 (L&S Plumbing), 294 NLRB 616, 617 (1989).

⁷ NLRB v. Boeing, 412 U.S. 67 (1973).

⁸ The Region determined that the Union has not demonstrated that the Employer-Member is "primarily engaged in the building and construction industry." 29 U.S.C. § 158(f); John Deklewa & Sons, 282 NLRB 1375, 1377, 1384, fn. 41 (1987); Painters, Local 1247 (Indio Paint & Rug Center), 156 NLRB 951 (1966) (burden of establishing 8(f) exception rests with the party seeking to avail itself of the exception).

⁹ See Slate Workers Local 66, 267 NLRB 601, 602 (1983) ("Section 8(b)(1)(A), like Section 8(a)(1) of the Act, is a broad provision implementing the Act's Section 7 rights, which are reserved to employees. . . the rights thus protected are those of employees only."), and compare Gulf Caribe Maritime, Inc., 330 NLRB 766, 766 (2000) (conditional offer to waive employees' initiation fee if

would have unlawfully imposed a minority union on the employees,¹⁰ absent the Employer-Member's capitulation, there has been no impact on the employees.

The Supreme Court's decision in Curtis Brothers is instructive on this issue. There, the Court held that peaceful picketing by a minority union to compel an employer to grant exclusive recognition does not violate Section 8(b)(1)(A). The Court stated that Section 8(b)(1)(A) proscribes only "union tactics involving violence, intimidation, and reprisal or threats thereof - conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes."¹¹ In other words, a union's peaceful attempt to persuade an employer to sign a minority contract does not violate Section 8(b)(1)(A) simply because the union lacks majority support.

The Board has applied Curtis Brothers beyond the scope of peaceful picketing. In Stroehmann Bakeries, Inc.,¹² for example, the Board relied on Curtis Brothers to determine the legality of a union's federal lawsuit against an employer. After determining that the suit was not entitled to protections under Bill Johnson's Restaurants, Inc. v. NLRB,¹³ because the statute the lawsuit sought to enforce was preempted, the Board held that a federal lawsuit seeking to impose minority recognition did not violate Section 8(b)(1)(A). In its decision, the Board compared

employees agreed to sign an authorization card before an NLRB election treated as coercion because conditional offer had "reasonable tendency to coerce those employees who desire to refrain from joining or assisting the union at a time when they were within their Section 7 rights to do so."); Teamsters Local 420 (Gregg Industries) 274 NLRB 603, 604-605 (1985) (union offer to waive initiation fees for employees who joined the union prior to election invalidates the election and violates Section 8(b)(1)(A)).

¹⁰ See International Ladies' Garment Workers' Union v. NLRB, 366 U.S. 731 (1961) (an employer cannot execute a collective-bargaining agreement with a minority union even when both parties possessed a good-faith belief that the union had already attained majority status prior to bargaining).

¹¹ Id. at 289.

¹² 320 NLRB 133, 138 (1995).

¹³ 461 U.S. 731 (1983).

the coercive effect of the suit to the effect of peaceful picketing and found that Curtis Brothers required that it find the action lawful. It stated: "the Supreme Court held that peaceful picketing by a union, which does not represent a majority of the employees, to compel immediate recognition as the employees' exclusive bargaining agent, does not constitute restraint or coercion within the meaning of Section 8(b)(1)(A). A fortiori, peaceful invocation of judicial processes for that objective should not be deemed restraint or coercion."¹⁴

Relying on Curtis Brothers, we authorized dismissal of a charge in a case factually similar to the case at hand.¹⁵ There, a plumber began his own business after failing to find work with the union. He maintained his individual membership in the union, but refused to sign a collective-bargaining agreement. The union fined him \$8,000 for violating its constitution, which required any self-employed member in the plumbing business to sign a collective-bargaining agreement with the union. Citing Curtis Brothers, we concluded that even if the charging party had employees who would be subject to an agreement without their consent, fining the employer would not be unlawful coercion because it would have no direct impact on employees.¹⁶

Here, the facts differ only in that the Union has offered to rescind a portion of a lawfully-imposed fine instead of simply fining the employer-member, a distinction without legal significance. The offer to reduce a lawful

¹⁴ Stroehmann Bakeries, Inc., 320 NLRB at 138 (citations omitted).

¹⁵ Trevino Plumbing and Heating, Case 7-CB-7505, Advice Memorandum dated July 7, 1988.

¹⁶ We have also found no merit when a minority union pressured an employer to gain recognition via economic means other than a fine. In Carpenters Local Union 51, Case 1-CB-8190, Advice Memorandum dated August 31, 1993, we authorized dismissal of a Section 8(b)(1)(A) charge where a union refused to sign a collective-bargaining agreement that it had previously agreed to, in order to pressure the employer to sign another agreement with its sister local covering another, nonunion, unit of the employer's employees. Applying Curtis Brothers, we concluded that exerting economic pressure that amounted to a refusal to work by the unionized employees did not violate the Act, despite the fact that such an agreement, if consummated, would violate Sections 8(a)(2) and 8(b)(1)(A).

fine imposed on an employer-member can no more coerce employees than "the general pressures" upon employees implicit in picketing.¹⁷ Thus, since Curtis Brothers permits peaceful picketing to achieve a contract with a minority union, an offer to partially rescind a lawfully imposed fine in order to obtain that result should also be permitted.

II. THE UNION DID NOT VIOLATE SECTION 8(B) (2) .

We also conclude that the Region should dismiss the Section 8(b)(2) claim, absent withdrawal, because the Union did not attempt to cause the termination of the Employer-Member's nonmember employees. Section 8(b)(2) makes it an unfair labor practice for a union to cause or attempt to cause an employer to discriminate against an employee in violation of that employee's Section 7 rights. Here, there is no evidence that the Union intended to enforce a union security clause against the Employer-Member's employees,¹⁸ or that it intended to otherwise cause the Employer-Member to fire his nonmember employees.¹⁹

Because we conclude that there is no merit to either the Section 8(b)(1)(A) or 8(b)(2) allegation, the Region should dismiss this charge, absent withdrawal.

B.J.K.

¹⁷ Curtis Brothers, 362 U.S. at 289.

¹⁸ The Union-proposed contract explicitly voided the union security clause for all employers in right-to-work states like Virginia. See Stockton Door Co. Inc., 218 NLRB 1053, 1055 (1975) (violation of Section 8(b)(2) for minority union to enter into a collective-bargaining agreement containing a union security clause in a union security state).

¹⁹ Compare Plumbers Local No. 589, 294 NLRB 617, 619-620 (1989) (union's internal charge against employer-member for working with nonmember employees violated 8(b)(2)).