

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

# Advice Memorandum

DATE: March 8, 2006

TO : Rosemary Pye, Regional Director  
Region 1

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

SUBJECT: International Brotherhood of Teamsters,  
and its Local 259 650-8811-3300  
(The Boston Globe) 650-8811-3392  
Case 1-CB-10556 650-8833-0100  
712-5042-3301  
712-5042-3380-5000

This case was submitted for advice as to: (1) whether Teamsters Local 259 violated Section 8(b)(3) of the Act by, after it had reached a comprehensive tentative agreement on a successor contract with the Boston Globe, refusing to hold a contract ratification vote at the direction of the Teamsters International, which had threatened to put the Local into trusteeship and replace its officers if the agreement were ratified; and (2) whether the International, which is not a Section 9(a) representative of the Unit or a party to the contract, violated Section 8(b)(3) and/or 8(b)(1)(A) of the Act by ordering Local 259 to cancel the ratification vote, forbidding it from proceeding to ratification, and threatening to put the Local into trusteeship and replace its officers if it should ratify the contract. [*FOIA Exemptions 2 and 5*]

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We conclude that the Region should issue a complaint, absent settlement, alleging that the Local violated Section 8(b)(3) of the Act by unreasonably delaying the bargaining process by failing to take the agreed-upon contract to its membership for ratification. The International shares responsibility with the Local for this 8(b)(3) violation, as it clearly directed the Local, on pain of strong disciplinary action, to violate its statutory obligations to the Employer, and the Local was acting under that mandate in delaying the ratification vote. We further conclude that, independently, the International's actions to prevent the Local from taking the contract to

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¹ The appropriateness of Section 10(j) injunctive relief will be addressed in a separate memorandum.

ratification violated Section 8(b)(1)(A). The appropriate remedy is set forth in detail below.

### **BACKGROUND AND FACTS**

#### **1. Overview**

Local 259 of the International Brotherhood of Teamsters has represented the Boston Globe's newspaper delivery drivers for about 100 years. The drivers are the largest and most powerful of the many Teamsters units at the Globe because a strike by the drivers can stop delivery of the paper. For this reason, the Globe usually negotiates with Local 259 before negotiating with its other locals, and this bargaining sets a pattern for bargaining with the others.

The parties began face-to-face negotiations for a new contract in December 2004. The Globe was intent upon getting Local 259 to waive its right to engage in sympathy strikes. Before a comprehensive tentative agreement had been reached by the parties, the International, which was neither a Section 9(a) representative of the Unit nor a party to the contract, met with the Globe and the Local and announced that it had a serious problem with the proposed waiver of the local's right to engage in sympathy strikes. It opposed this provision because a recent merger of the Teamsters with the GCIU had increased the number of Globe locals affiliated with the Teamsters and thus potentially eligible to be supported by a sympathy strike of the delivery drivers. The International conceded, however, that it was not a party to the contract.

Because Local 259 was eager to get funds to replenish its pension and healthcare funds and the Globe was willing to pay a substantial sum in exchange for an agreement on the no-strike issue, the parties on December 8, 2005,<sup>2</sup> reached a full tentative agreement satisfying the interests of both parties. Local 259 agreed to recommend the agreement for ratification by the unit employees and scheduled the vote first for December 18, and then for January 8. The two contracting parties have at all times agreed that the only condition precedent to final agreement was ratification.

When the International learned that the parties' agreement pending ratification contained a comprehensive

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<sup>2</sup> All November and December dates are 2005 and all other dates are 2006, unless otherwise indicated.

no-strike provision that, in its view, was harmful to its interests and those of its membership, (1) it informed the Globe that it would not allow the Local to enter into an agreement with the no-strike clause, it would invoke the International's constitution to prevent a ratification vote, and would put the Local into trusteeship and replace its leadership if the Local went ahead with the ratification vote; and (2) pursuant to its constitution, it directed the Local to cancel the scheduled ratification vote and refrain from taking the agreement to ratification.

Local 259 informed the Globe on December 23 that it had cancelled the ratification vote based on the directive from the International. The vote has not been rescheduled. Subsequent to those events, the International held an informational meeting to determine whether to bring charges against Local 259 for violating the Teamsters' constitution.<sup>3</sup>

## **2. The Charge**

The Globe filed the instant charge against the International on December 30, and amended it to add Local 259 on January 5. The amended charge alleges that Local 259 violated Section 8(b)(3) of the Act by canceling and then refusing to hold a ratification vote concerning a tentative agreement reached between the Globe and Local 259 on December 8, and that the International violated Section 8(b)(3) and 8(b)(1)(A) of the Act by threatening Local 259 with trusteeship and other forms of retaliation if Local 259 held the ratification vote.

## **3. Facts<sup>4</sup>**

### **A. The parties' bargaining history**

There were no written ground rules for the negotiations. However, neither the Local nor the Employer dispute that, consistent with historical practice, ratification by the members is the sole condition precedent

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<sup>3</sup> The Region attempted to get an account of this meeting, but to date the members have refused to cooperate with the Region's investigation.

<sup>4</sup> Because Local 259 and the International refused to cooperate or provide evidence beyond a position paper from the International, the Globe's affidavit evidence is un rebutted. Moreover, Local 259, in its original dealings with the Region, orally confirmed the outline of the Globe's testimony.

to a contract. The history has been for the bargaining committee to present the membership with its recommendation, which the membership has always followed. The International has never been a signatory to any agreement between Local 259 and the Globe, and, for at least the last five contracts, it was not involved in any bargaining. Prior to the events at issue in the present case, the International never claimed a right to review or veto an agreement.

B. The 2004-2005 negotiations

The Globe and Local 259 began exchanging written proposals for a successor contract around September 2004, and face-to-face negotiations began around December 2004. The Employer's bargaining team included Senior Vice President for Employee Relations and Operations Greg Thornton and Executive Director for Employee Relations Christopher Hall. Local 259's team included President Joseph Donahue and Secretary-Treasurer Ralph Goscinak. The International did not participate in bargaining.

The parties' November 21 meeting with the International. In November, the Local informed Employer-representatives Thornton and Hall that International Representative Joe Molinero wanted to meet with the Employer to learn what was going on at the Globe generally. The Globe explains that it agreed to such a meeting because it is not uncommon for international representatives to reach out in this way for informal, off-the-record discussions, and it would be considered disrespectful to refuse such a request.

The parties (including Thornton and Hall on behalf of the Globe, and Donahue and Goscinak for Local 259) met with Molinero on November 21. Thornton spent most of the meeting discussing the Globe's poor economic condition, leading to what the Globe was looking for in bargaining with Local 259. According to the Globe, Thornton repeatedly emphasized that the Employer was not at the meeting to bargain, but was meeting with the International only as a courtesy, and that the International had never been a party to negotiations. Molinero on several occasions said that he understood that. At one point Molinero stated that the International is "not a part of" the negotiation, but that he had concerns about the revised no-strike provision.

According to the Globe, Molinero claimed that the no-strike proposal created a serious issue for the International because, as a result of its recent merger with the GCIU, the pressmen and graphics employees were now

affiliated with the Teamsters. The Employer explained that it felt it needed the no-strike protection, describing among other things the Globe's contentious relationship with the Mailers since its leadership changed three years ago.<sup>5</sup> The Globe also states that Thornton discussed possible ways to accomplish the Globe's no-strike goal, but made it clear that these were options that the Globe would negotiate with Local 259.

When Thornton told Molinero that several other newspapers had negotiated no-strike protection even after the merger and provided examples of the contract language from those contracts, Molinero seemed surprised and said he would check into that. He stepped out of the room to make some phone calls and, upon returning, confirmed Thornton's claim that other Teamsters locals had recently agreed to this no-strike language. According to the Employer, at the end of the meeting Molinero told the Local representatives that he was unhappy about the broad no-strike language but thought there was nothing that the International could do about it.<sup>6</sup> Neither Thornton nor Hall indicated that they would bargain with Molinero or even meet with him again, and, according to the Globe, the International did not

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<sup>5</sup> The contract between the Globe and the Mailers expired on March 31, 2005. Although requests for bargaining dates are outstanding, none has been scheduled. According to the Globe, the failure to set bargaining dates is largely due to these charges and the Globe's contention that it needs to have some degree of certainty about the situation with Local 259 before negotiating with the Mailers. No charges have been brought by any party alleging a delay in holding bargaining sessions.

<sup>6</sup> In its position statement, the International asserts that the Globe was put on notice at this meeting of the International's "interest in the matter." It contends that the November 21 meeting concluded with an agreement that all parties would consider the issues and meet again, and that it was clear that any tentative agreement would have to be reviewed by Molinero prior to ratification.

The International also asserts that it objected to the proposed "two-tier wage system." The Globe denies that it discussed the two-tier proposal with the International. It asserts that the only mention of the two-tier system was a side conversation between Local 259 and the International where Local 259 described the Globe's system. In light of our analysis below, it is not necessary to resolve these conflicts here.

claim that it had to review or approve whatever language might be negotiated.

The December 8 agreement. After the November 21 meeting, the Globe met twice again with Local 259. On December 8, the parties reached a complete tentative agreement, subject only to member ratification. This agreement included comprehensive no-strike language barring Local 259 from honoring the picket lines of other local unions.<sup>7</sup> As a *quid pro quo*, the Globe agreed to pay large sums of money into Local 259's health insurance and pension funds,<sup>8</sup> both of which are operating under large deficits.<sup>9</sup> At this time, according to the Globe, the Local's negotiators committed to sending the agreed-upon contract to a ratification vote and to recommend unanimously in favor of the contract.<sup>10</sup> The Local scheduled the ratification vote for December 18.

The International's reaction to the December 8 agreement. Shortly after the parties reached the tentative agreement, Local President Donahue informed the Globe that the International objected to the agreement's no-strike clause and that, at the International's request, the Local had postponed the December 18 ratification vote until January 8, while assuring the Employer that it would be "going ahead [with the ratification process] quickly." Donahue said that the International wanted to meet with Globe representatives to discuss the no-strike language and to find out what was going on with the other unions (the Mailers and the Pressmen). When Thornton replied that the parties already had a deal and asked whether there was a problem, Donahue affirmed that the parties "have a deal,"

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<sup>7</sup> The language in prior contracts between the parties had allowed the drivers to engage in sympathy strikes involving only Teamster-affiliated locals, which up until June 2005 included only the Mailers and one other local. However, because of a June 2005 merger of the Graphic Communications International Union and the IBT, three additional Globe units (the Pressmen, Paperhandlers, and Engravers) are now affiliated with the Teamsters.

<sup>8</sup> Including a one-time \$300,000 payment to the Local's health fund upon ratification.

<sup>9</sup> In fact, the health insurer, Harvard Pilgrim, has notified Local 259 that if the debt accruing in Local 259's health fund is not paid, Harvard Pilgrim will no longer pay benefits.

<sup>10</sup> The Globe's bargaining notes corroborate this.

but asked if Thornton would not mind meeting with the International representatives and telling them that they already have a deal.

On December 19, Thornton and Hall met with International representatives Molinero and John Murphy, without anyone present from Local 259. Molinero stated that the International was upset with the drivers' contract, particularly the no-strike language because of its effect on employees in other bargaining units.<sup>11</sup> Thornton repeatedly stated that they were meeting with the International as a courtesy and not to bargain. Molinero told the Globe that the International would not permit Local 259 to enter into a contract containing the no-strike clause.<sup>12</sup> Both of the representatives of the International said that if the Globe did not agree to change the contract, the International might have to take steps against the Local under Article XII of its constitution,<sup>13</sup> including putting the Local into trusteeship and replacing its officers with the Mailers' officers. Thornton told the International representatives that the Globe had a binding agreement with Local 259, subject only to employee ratification, and that the Globe was unwilling to modify the no-strike provision of the agreement.

After this meeting, Thornton spoke with Donahue from the Local and told him that he thought the Local would be hearing from the International. Thornton stated that the Employer and Local have a deal and that the International was not happy about it. Donahue suggested that there was nothing the International could do about it since the

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<sup>11</sup> Murphy indicated an additional concern -- the two-tier wage system and how that provision would affect the Mailers.

<sup>12</sup> Although the Globe had known that the International was not happy with the no-strike language, the Globe asserts that this was the first time the International, in any meeting or communication with the Globe, took the position that Local 259 could not enter into agreement and that it was forbidding Local 259 from doing so.

<sup>13</sup> As set forth more fully below, this constitutional provision allows the International, in effect, to veto the execution of a proposed contract if it adversely affects the members of the unit or other Teamster locals. It also spells out the discipline, including the imposition of a trusteeship, that its General Executive Board can impose on a local that executes an agreement that adversely affects members of the International.

International had agreed to this language in other contracts and because the Local got what it needed in exchange and they already have a deal. Donahue said that the Local was rescheduling the ratification vote.

Actions to block ratification. On December 22, the International wrote a letter to Local 259 "directing" it "not to hold any ratification vote on the proposed agreement covering the drivers at the Boston Globe." The letter stated that the International had received objections to the no-strike provision from the Boston Mailers' Union No. 1, Boston Newspaper Printing Pressmen's Union No. 3N, and GCC President George Tedeschi. It stated that the no-strike provision would leave Local 259's members without any protection in the event that the Mailers' local began picketing at the Globe in support of its own contract dispute, would seriously undermine the ability of the Mailers to negotiate a fair agreement for its members, would undermine the ability of other locals to negotiate fair agreements in the future, would violate basic trade union principles, and would seriously and adversely affect the working conditions and standards enjoyed by the International's members, including the members of these local unions. The International announced that Local 259's proposed action to ratify the contract jeopardizes the interests of the International Union and its subordinate bodies within the meaning of Article VI, Section 5 of the International's Constitution. The letter stated that the International was in the process of invoking Article XII, Section 10 of its Constitution, which allows it to take actions to protect its interests, including placing the offending local union in trusteeship.

By a letter dated December 23, the Local informed the Globe that, pursuant to a "directive from our International Union, we have cancelled the ratification vote scheduled for January 8, 2005," and said, "[w]e will let you know whether the vote can be rescheduled."

In a December 29 Notice to the officers and members of Local 259, the International announced that it would hold a hearing on January 10 to address the objections to the proposed agreement between Local 259 and the Globe. The stated purpose of the hearing was so that "all interested parties may be heard on these issues and so that the General Executive Board may have a full record to inform its deliberations." The objections include that the proposed agreement waives the right of members to honor lawful picket lines and contains other wages, terms, and conditions below those prevailing in the area. The Notice stated that, after investigation, Molinero found that, "among other matters, the proposed agreement does waive the

right of members to honor lawful picket lines; and [he] notes that eliminating this longstanding protection would seriously jeopardize the rights of members who decide to respect lawful picket lines."

The Notice cited Article XII, §10, of the International's constitution, which provides:

In such instances where the General Executive Board receives information of the proposed execution of an agreement which affects the interests of either the members involved or any other members of the International Union by providing working conditions or earnings less than those prevailing in the area, it shall have the power to hold a hearing on such matters and may, by a majority vote, direct the subordinate body to refrain from executing such agreement, and in such circumstances no proposed agreements shall become valid and binding unless specifically approved by the General Executive Board. When such action is contemplated or taken, the employers involved shall be promptly notified of the necessity of specific approval by the General Executive Board before the agreement involved may become valid and binding.

The General Executive Board shall also have the power to take such disciplinary action as it deems necessary, after proper notice ..., including without limitation, the imposition of a trusteeship or a transfer of the Local Union's jurisdiction, in those cases where it finds that a [local] has without cause executed agreements [that] adversely affect members of the International.

The International held a meeting on January 10 to address objections to the tentative agreement reached between the Local and the Globe, and to determine whether to bring internal union charges against the Local. To date, no employees have been willing to provide information about that meeting, but there has been no movement toward ratification, and there is no indication that the International is moving forward to impose a trusteeship on the Local.

#### **ACTION**

We conclude that the Region should issue a complaint, absent settlement, alleging that the Local violated Section 8(b) (3) of the Act and that the International violated

Section 8(b)(3) and 8(b)(1)(A) of the Act, as discussed below.

1. The Local's failure to take the December 8 agreement to a ratification vote violates Section 8(b)(3).

It is well established that parties may establish a condition precedent for final acceptance of a contract.<sup>14</sup> When a party asserts that approval by another party or individual is a condition precedent to a final and binding agreement, such a requirement must be conveyed to the other party by clear and unambiguous notice.<sup>15</sup>

In this case, there is no dispute that employee ratification was a condition precedent to a binding agreement. We conclude, however, that International approval of the contract was not a condition precedent. The International asserts in its position statement that at the November 21 meeting, it put the Globe on notice of the International's "interest in the matter," as well as its objections to the Globe's proposed no-strike language and "two-tier wage system." It contends that the November 21 meeting concluded with an agreement that all parties would consider the issues and meet again, and that it was clear that any tentative agreement would have to be reviewed by Molinero prior to ratification. The International's assertions are irrelevant, however, because regardless of whether the Globe was "on notice" about the International's desires, only a negotiating party can create a condition precedent, and there is no suggestion that the Local notified the Globe that approval by the International was such a condition.<sup>16</sup> Thus, we agree with the Region that approval by the International was not a condition precedent to a binding contract, and that the only such condition was employee ratification.

Once parties enter into a tentative agreement conditioned only on ratification, the party controlling the ratification has a good-faith duty to promptly hold the ratification vote as promised. Delaying the ratification

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<sup>14</sup> Hinney Printing Co., 262 NLRB 157, 164-165 (1992); Painters, Local 850, 177 NLRB 155 (1969).

<sup>15</sup> See, e.g., UAW Local 365 (Cecilware Corp.), 307 NLRB 189, 193-194 (1992); Induction Services, 292 NLRB 863, 865 (1984).

<sup>16</sup> See, e.g., UAW Local 365 (Cecilware Corp.), supra, 307 NLRB at 194.

process violates the duty to bargain in good faith.<sup>17</sup> Thus in Long Island Day Care Services, Inc., the Board found that where ratification by the bargaining unit employees and the employer's board of directors was the only precondition to agreement, the employer's delay in submitting the agreement to its board of directors because the employer's president and a "Parent Policy Council" were unhappy with several of the agreed-upon terms violated Section 8(a)(5).<sup>18</sup> The Board found that because approval by the president and the Parent Policy Council was not a precondition to agreement, the employer was obligated to "promptly" submit the agreement for approval or rejection. Its failure to do so for more than six months was an "unwarranted and unjustified delay by the [employer] in a crucial aspect of the bargaining process" in violation of Section 8(a)(5).<sup>19</sup>

Similarly, in Steelworkers Local 7807 (ITT Abrasive Products),<sup>20</sup> the Board found a violation of Section 8(b)(3) where the union refused to recommend and submit a contract to its membership for ratification unless the employer abandoned its decision to discipline certain employees for alleged strike misconduct.<sup>21</sup>

In the instant case, as in Steelworkers Local 7807, the sole condition precedent to a binding agreement is ratification, and Local 259 was obligated to promptly submit the agreement to the employees for approval or rejection. The Local was not entitled to delay ratification and obstruct final agreement in the pursuit of

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<sup>17</sup> Long Island Day Care, 303 NLRB 112, 129 (1991) (employer violated 8(a)(5) by unreasonably delaying the ratification process).

<sup>18</sup> *Supra*, 303 NLRB at 112 and 129.

<sup>19</sup> *Ibid.*

<sup>20</sup> 224 NLRB 78 (1976).

<sup>21</sup> *Id.* at 83. See also ALJ decision in Teamsters Local 287 (Granite Rock), JD(SF)-52-05 (July 2005), 2005 WL 1711194, currently pending before the Board on exceptions (same, delay in submitting contract for ratification, apparently as leverage for negotiating a separate back-to-work agreement for returning strikers, violated Section 8(b)(3); ALJ noted implied covenant of good-faith and fair dealing between parties to a contract; contracting party can reasonably be expected to hold a ratification vote as promised.)

other results. As in Steelworkers, where the union delayed ratification to obtain information from the employer regarding discipline for strike misconduct,<sup>22</sup> the Local cannot delay ratification to avoid the punishment the International has threatened in return for the broad no-strike clause. The Local's dispute with the International is not a legitimate basis for failing to schedule the ratification vote, but, as in Steelworkers, is a separate dispute that cannot obstruct its Section 8(d) obligation to bargain in good faith.

We recognize that Local 259 was faced with a dilemma. As of at least November 21, the Local was aware that the International was unhappy with the comprehensive no-strike provision, and it could have resolved this issue with the International, or addressed it in negotiations with the Employer, prior to reaching agreement on December 8. The Local may have thought that the International had given its permission to enter into the no-strike provision, albeit grudgingly, by indicating that it perhaps "could do nothing about" such a provision. In any event, having entered into a tentative contract containing the provision that offended the International and precipitated a situation in which compliance with its statutory obligation to the Employer may lead to harsh discipline from the International, the Local may not solve its problem by disregarding its obligation under the Act to take the contract to ratification. Accordingly, the Local unlawfully delayed the ratification process in violation of Section 8(b)(3).

Merrell M. Williams,<sup>23</sup> relied on by the International, is not controlling. That case did not involve an allegation of a refusal to present an agreed-upon contract for ratification. Rather, the contention was that the employer's late-stage repudiation of two subjects on which the parties had reached tentative agreements during contract negotiations was unlawful reneging.<sup>24</sup> The Board disagreed, finding that employer's negotiator acted in good faith in withdrawing the tentative agreements.<sup>25</sup> In contrast to Williams, at no time has the Local repudiated any of the provisions of the December 8 agreement. Indeed,

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<sup>22</sup> 224 NLRB at 82-83.

<sup>23</sup> 279 NLRB 82 (1986).

<sup>24</sup> We note that the complaint in that case alleged only that the employer's repudiation of two particular tentative agreements evidenced bad faith. Id. at 83, n. 4.

<sup>25</sup> Id. at 83.

it continued to reassure the Employer that they "had a deal" and that the Local would soon be moving forward with the ratification process. This occurred even after learning that at the December 19 meeting the International told the Employer that it would not allow the Local to enter into an agreement with the no-strike clause and threatened to put the Local in trusteeship if it went ahead with the ratification. Thus, this case is properly viewed as involving a delay in an agreed-upon ratification condition rather than a withdrawal of tentative agreements.

2. The International violated Section 8(b)(3) and 8(b)(1)(A) by directing and coercing the Local to violate its statutory obligations to the Employer.

A. Section 8(b)(3)

We conclude that the International shares liability for the Local's 8(b)(3) violation, as it directed the Local, on pain of strong disciplinary action, to violate its statutory obligations to the Employer, and the Local was acting under that mandate in delaying the ratification vote.

Although an international union is not responsible for a local's actions simply by virtue of the affiliation relationship, an international can be held liable for its local's unlawful actions where it has "instigated, supported, ratified, encouraged or condoned" such acts.<sup>26</sup> Under this principle, an international may be held liable under Section 8(b)(3) for directing a local's 8(b)(3) violation even where the international is not the 9(a) representative of the employees. For example, in IBEW, Local 59 (Texlite)<sup>27</sup> an international that was not a 9(a) representative was found to "share" the liability of a constituent local that violated Section 8(b)(3) by insisting on bargaining in an inappropriate unit. The Board rejected the international's argument that it could

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<sup>26</sup> Carbon Fuel Co. v. Mine Workers, 444 U.S. 212, 218 (1979) (in absence of such evidence international signatory to contract not liable for local's breach of contractual no-strike clause). See also Sheet Metal Workers Int'l. Assn., 127 NLRB 1629, 1630, 1666-1667 (1960) (international liable for local's unlawful inducement of secondary's employees not to handle nonunion products where "do not handle" policy was embodied in international constitution and policies and local was acting pursuant to directions from international).

<sup>27</sup> 119 NLRB 1792 (1958).

not have violated Section 8(b)(3) because it had never been the collective-bargaining representative of the employees. The Board found the international liable because it induced the local to insist on bargaining in an inappropriate unit and because it "directed and controlled" the local's unlawful actions.<sup>28</sup> In support of that conclusion, the Board noted that the conflict between the local and the employer about the scope of the bargaining unit originated in a policy established by the international, and thus the conflict was "not of a local nature but part of a pattern designed to implement the [i]nternational's policies."<sup>29</sup> The Board further noted that the international's constitution empowered it to "supervise, control and direct" the bargaining negotiations of its locals, and that the international had exercised such control, with the local "following such directions and submitting to such control and supervision."<sup>30</sup>

Similarly, in Sheet Metal Workers Local 26 (Reno Employers Council),<sup>31</sup> the Board affirmed the ALJ's finding that the international was liable, together with the local, for violating Section 8(b)(3) by insisting on illegal 8(e) provisions even though the international was not the 9(a) representative. The unlawful proposals stemmed from the international itself, and it participated in the negotiations and failed to disavow the local's representations that the international would not allow deviations from this standard form proposal. In these circumstances, it was "a fair inference that the international made common cause with the local in pressing the contract proposals and must share with it responsibility for the consequences."<sup>32</sup>

As in the cited cases, the International here shared responsibility for the Local's illegal actions in failing to submit the contract to ratification because it initiated, directed and controlled the Local's actions. The International initiated review of the Local's bargaining position and directed it to breach its duty to take the agreed-upon contract to ratification when, in its letter of December 22, the International specifically

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<sup>28</sup> Id. at 1792, 1800.

<sup>29</sup> Id. at 1800.

<sup>30</sup> Ibid.

<sup>31</sup> 168 NLRB 893, 898 (1967).

<sup>32</sup> Id.

demanded that the Local cancel the planned ratification vote and refrain from conducting any such vote until the General Executive Board acts pursuant to the International's invocation of Article XII proceedings. That the International also controlled the Local's decision is amply demonstrated. In the December 19 meeting with the Globe, the International threatened to impose trusteeship on the Local and to replace its officers if the Local should proceed to ratification. Its December 22 letter to the Local directly tied the ratification vote to the Article XII proceeding, and the Local, in its December 23 cancellation of the vote, explicitly referenced that directive. Thus, but for the International's actions after the comprehensive agreement had been reached, the Local undoubtedly would have taken the agreement promptly to ratification with its strong support.

Even assuming the International lawfully may invoke its constitution to discipline the Local for accepting a contract that includes a provision inimical to the International's interests, its approval of such a provision, or of the contract as a whole, was not a condition precedent to ratification. Thus, it had no role in the negotiating process between the Employer and the Local. After those parties had reached an agreement, it could not act in concert with the Local, or through it, to frustrate the Employer's right under Section 8(d) of the Act to have the Local act in good faith by taking the agreed-upon contract to ratification.

Accordingly, the Region should issue a complaint, absent settlement, alleging that the International violated Section 8(b)(3) by inducing and directing the Local to frustrate ratification of an agreed-upon contract.

B. Section 8(b)(1)(A)

We further conclude that, independently, the International's actions to force the Local to commit an unfair labor practice by failing to take the contract to ratification also violated Section 8(b)(1)(A). By threatening the employees' selected bargaining representative with sanctions if it did not comply, the International thereby restrained and coerced the employees in the exercise of their Section 7 rights to bargain through that representative and to enjoy the fruits of the bargaining.<sup>33</sup>

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<sup>33</sup> See, e.g., Dahl Fish Co., 279 NLRB 1084, 1110-1111 (1986) (in determining that a lawsuit filed against a union was restraint or coercion against employees, the ALJ noted the "nexus" between the union and the protection of employees')

As the proviso to section 8(b)(1)(A)<sup>34</sup> and caselaw have long recognized, a union is entitled to "enforce a properly adopted rule which reflects legitimate union interest."<sup>35</sup> Further, we recognize that the International has a legitimate interest in preventing its locals from entering into agreements that it deems harmful to the International's interests or those of its constituent locals; nor is there any illegality in the International's position here that including sympathy strikes in a no strike clause is harmful to its membership. Accordingly, we presume that it would be entitled to administer its constitution and impose discipline against locals for entering into such agreements.

The exemption of internal union processes from the regulation of 8(b)(1)(A) applies, however, only to a union rule that "impairs no policy Congress has embedded in the labor law."<sup>36</sup> "[I]f the rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced. . . without violating 8(b)(1)."<sup>37</sup> Thus, it is well settled that the Board may reach internal union disciplinary actions that run counter to the recognized public policies of the Act. For example, the Board has long held with court approval that the proviso does not shield from condemnation under 8(b)(1)(A) a union's fine of a member for refusing to engage in conduct that would be unlawful under the Act.<sup>38</sup> Similarly, a union may not fine

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rights, and that action against the union "would divest the employees of the advantages gained by their decision to organize and to be represented by" the union).

<sup>34</sup> The proviso to section 8(b)(1)(A) states that nothing in this paragraph shall "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein"

<sup>35</sup> Scotfield v. NLRB, 394 U.S. 423, 430 (1969). See also NLRB v. Allis-Chalmers Mfg. Co., [388 U.S. 175, 187-195](#) (1967) (discussing legislative history demonstrating that Congress did not intend section 8(b)(1)(A) to interfere with the internal affairs or organization of unions).

<sup>36</sup> Scotfield, 394 U.S. at 430.

<sup>37</sup> Id. at 429.

<sup>38</sup> Operating Engineers Local 150 (Harsco Corp.), 313 NLRB 659, 669-670 (1994), enf'd 47 F.3d 218 (7<sup>th</sup> Cir. 1995) and cases there cited (union violated 8(b)(1)(A) for filing

members for filing charges with the Board without exhausting their internal union remedies because such a rule unlawfully restricts its members' access to the Board's processes in contravention of the important public policy of unfettered access to the Board.<sup>39</sup>

A union's imposition of other internal discipline such as the imposition of a trusteeship or removal from union office is also unlawful if it interferes with policies embedded in the labor laws. Thus, in Local 1367, ILA (Galveston Maritime Association),<sup>40</sup> the Board found that the district union violated Section 8(b)(1)(A) by initiating action pursuant to its constitution to impose a trusteeship on its constituent local in retaliation for the local's having filed unfair labor practice charges against it. Similarly, in Mail Handlers Div. (U.S. Postal Service),<sup>41</sup> the Board found unlawful a union's removal of a steward for filing charges with the Board.

In this case, the International may be privileged to discipline Local 259 for agreeing to the provisions here, which the International believes are against its interests. It cannot, however, use the threat of trusteeship or other discipline to preclude the Local from performing its statutory obligation to take the agreed-upon contract to ratification. The International's actions to block the Local from taking the contract to ratification interfered with the Local's Section 8(d) bargaining obligation, the collective-bargaining process, and exercise of the employees' Section 7 rights -- thereby frustrating several overriding labor law policies.<sup>42</sup> We conclude, therefore, that the International violated Section 8(b)(1)(A) of the Act by ordering Local 259 to cancel the scheduled

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charges and threatening to fine employees for refusing to engage in illegal secondary boycott).

<sup>39</sup> Local 138, International Union of Operating Engineers, AFL-CIO (Charles S. Skura), 148 NLRB 679, 684 (1964); NLRB v. Marine and Shipbuilding Workers Local 22, 391 U.S. 418 (1968) enf'g. 159 NLRB 1065 (1966).

<sup>40</sup> 148 NLRB 897, 898 (1964).

<sup>41</sup> 281 NLRB 1074, 1079-1080 (1986).

<sup>42</sup> See, e.g., NLRB v. System Council T-6, IBEW, 599 F.2d 5, 9 (1<sup>st</sup> Cir. 1979) (where a union's internal rule and discipline abridged the company's collective bargaining rights under Section 8(b)(3), the union thereby frustrated overriding labor law policy and ran afoul of Section 8(b)(1)(A)).

ratification vote, forbidding it from proceeding to ratification, and threatening to put the Local into trusteeship and replace its officers if it should ratify the contract.

3. [*FOIA Exemptions 2 and 5*]

[*FOIA Exemptions 2 and 5*

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[*FOIA Exemptions 2 and 5*

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**CONCLUSION**

Accordingly, the Region should issue a complaint, absent settlement, alleging: (1) that the Local violated Section 8(b)(3) of the Act by unreasonably delaying the bargaining process by failing to take the agreed-upon contract to its membership for ratification; and (2) that the International violated Section 8(b)(3) by directing the

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<sup>43</sup> [*FOIA Exemptions 2 and 5*

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Local to violate its statutory obligations to the Employer; and 8(b)(1)(A) by coercing the employees' chosen bargaining representative and thereby restraining the employees in the exercise of their Section 7 rights.

B.J.K.