

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

# Advice Memorandum

DATE: October 18, 2006

TO : Frederick J. Calatrello, Regional Director  
Region 8

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

SUBJECT: International Union, United Automobile & 536-5025-3300  
Agricultural Implement Workers of America 536-5050-6730  
(UAW) and UAW Local 12 (St. Vincent) 536-5050-6733  
Case 8-CB-10545

This case was submitted for advice on whether the Union's "special official application for membership" form that "irrevocably" grants the Union authority to represent members in all situations arising out of their employment, including cases before the Board, violates Section 8(b)(1)(A). We conclude that the clause violates the Act because, on its face, it gives the appearance to members that they are prohibited from resigning from the Union, in violation of Pattern Makers' League of North America v. NLRB,<sup>1</sup> and because it impinges upon members' right to bring Board charges on their own.<sup>2</sup>

## FACTS

To solicit employees to join the Union, the International Union, United Automobile & Agricultural Implement Workers of America Local 12 (UAW) gave employees two cards connected by a perforated crease, one entitled a "Special Official Application for Membership" and the other entitled "Authorization for Check-off Dues."

The Special Official Application for Membership card contained a first paragraph with traditional language whereby the employee designates the UAW as his exclusive representative for purposes of collective bargaining. The

---

<sup>1</sup> 473 U.S. 95 (1985).

<sup>2</sup> The charge, filed by the Right to Work Foundation, alleges additional violations, including the Union's failure to provide employees notice of their General Motors and Beck rights and the Union's removal of flyers concerning Beck rights that the Charging Parties posted. The Region is still investigating these charges, which have not been submitted for advice.

card contains a second paragraph that "irrevocably" grants the UAW authority to represent the employee in all employment situations:

I further irrevocably designate, authorize, and empower the said Union exclusively to appear and act for me and in my behalf before any board, court, committee, or other tribunal in any matter affecting my status as an employee or as a member of said Union, and exclusively to act as my agent to represent and bind me in the presentation, prosecution, adjustment and settlement of all grievances, complaints or disputes of any kind or character arising out of the employer-employee relationship as fully and to all intents and purposes as I might or could do if personally present. (Emphasis added).

The UAW claims that the language was intended solely to give the Union the exclusive authority to settle individual grievances and has never been used to deprive members of their right to resign or to file Board charges.

#### **ACTION**

The Region should issue complaint, absent settlement, alleging that the paragraph at issue is unlawful because it on its face appears to prohibit a member's right to resign and because it impinges upon a member's right to file Board charges.

In Pattern Makers, the Supreme Court affirmed the Board's view that a union violates Section 8(b)(1)(A) by placing any restrictions on a member's right to resign from a union.<sup>3</sup> Thus, even though an employee voluntarily chooses union membership, the Court affirmed the Board's view that union restrictions on the right to resign were inconsistent with the policy of voluntary unionism implicit in Section 8(a)(3).<sup>4</sup> The Board has also held that the "mere maintenance" of a provision restricting resignation restrains and coerces employees from exercising their

---

<sup>3</sup> Pattern Makers, 473 U.S. at 114 (union violated Section 8(b)(1)(A) by fining employees who, contrary to a rule in the union's constitution, tendered resignations during a strike and returned to work); See Machinists Local 1414 (Neufeld Porsche-Audi), 270 NLRB 1330, 1333 (1984) (union violated Section 8(b)(1)(A) by imposing fine on employee returning to work during a strike after he resigned union membership).

<sup>4</sup> Pattern Makers, 473 U.S. at 1104-05.

Section 7 rights.<sup>5</sup> Thus, an employee can be restrained and coerced by a union membership clause even if that employee voluntarily chose union membership and even if the clause purportedly restricting union resignations is never enforced.

The Union's application here provides that a member "irrevocably designate[s]" the Union as the member's exclusive agent in employment matters. The term "irrevocable" is defined as that which cannot be recalled, undone, or altered.<sup>6</sup> Given this definition, stating that the designation is "irrevocable" is equivalent to stating that the employee cannot alter or undo the designation.

While the term "irrevocably" is contained in a paragraph specifically granting the Union the exclusive ability to act as the employee's representative in employment-related proceedings before any board, court, committee, or tribunal, and in all grievance proceedings, that paragraph just follows the traditional paragraph designating the Union as the employee's exclusive collective bargaining representative. Both paragraphs are contained on a single form with one signature line, and the card contains no other language concerning when or whether a union member can withdraw membership. Accordingly, an employee would reasonably assume that the designation of the Union as his exclusive representative in all employment-related judicial, administrative, and arbitral proceedings is not a separate matter from Union membership but, rather, a further explication of the rights and responsibilities that accompany Union membership. Indeed, in the third paragraph of the card, the employee agrees to faithfully observe the Union constitution and its laws, indicating that the whole card relates to rights and responsibilities of Union membership. Since the whole card pertains to Union membership, the card contains an

---

<sup>5</sup> Auto Workers Local 449 (Nat. Metalcrafters), 283 NLRB 182, 182 fn. 1 (1987) (provision restricting submission of resignations to 10-day period violated Section 8(b)(1)(A)), enfd. in rel. part 865 F.2d 791 (6th Cir. 1989); Sheet Metal Workers Local 73 (Safe Air), 274 NLRB 374, 375 (1985) (provision prohibiting a member from resigning in anticipation of charges filed against him, during the pendency of any charges, or during a strike or lockout violated Section 8(b)(1)(A)), enfd. 840 F.2d 501 (7th Cir. 1988).

<sup>6</sup> Webster's New World Dictionary, Second College Dictionary, 1986.

"irrevocable" acceptance of membership. Since nothing in the card clarifies to employees that they can resign from the Union at any time, the card is unlawful under Pattern Makers.

We further conclude that the clause violates Section 8(b)(1)(A) because it restricts members' right to bring Board charges.

It is unlawful for an employer or a union to limit an employee's right to file Board charges. In U'Haul Company of California,<sup>7</sup> the Board recently held that an employer violated the Act where it required employees to sign an arbitration agreement implicitly restricting employees from resorting to the Board's remedial procedures. While the policy did not explicitly mention Board charges, the Board found that the breadth of the language – applying to causes of action recognized by federal law or regulations – would reasonably be read by employees to prohibit the filing of unfair labor practice charges with the Board.<sup>8</sup>

Similarly, both the Board and the Supreme Court have long held that a union violates Section 8(b)(1)(A) where it restricts union members' right to bring charges against a union, even if the employees voluntarily chose union membership.<sup>9</sup> A union cannot, for instance, require that members exhaust internal remedies before filing charges<sup>10</sup> or discipline members for filing charges.<sup>11</sup> The rationale is that "the right to file charges is indispensable to the administration of the Act," and "protection of that right must be strictly safeguarded."<sup>12</sup> The policy of preserving unimpeded access to the Board requires that no private organization impede or regulate access to the Board.<sup>13</sup>

---

<sup>7</sup> 347 NLRB No. 34, slip op. at 3 (2006).

<sup>8</sup> Id.

<sup>9</sup> NLRB v. Industrial Union of Marine and Shipbuilding Workers of America, 391 U.S. 418, 423 (1968); Operating Engineers Local 138 (Charles S. Skura), 148 NLRB 679, 683 (1964); Iron Workers (Walker Const.), 277 NLRB 1071, 1072 (1985).

<sup>10</sup> Marine and Shipbuilding Workers of America, 391 U.S. at 423.

<sup>11</sup> Iron Workers, 277 NLRB at 1071-1072.

<sup>12</sup> Id.

<sup>13</sup> Id.

Here, the paragraph at issue grants the Union the right to appear and act exclusively on behalf of members in all employment matters before "any board, court, committee, or other tribunal," and binds members in the adjustment and settlement of all disputes. This broad language includes Board charges and thus impedes a Union member's right to bring some kinds of unfair labor practice charges. Where the member seeks to bring charges against the Union itself, the Union would have the authority to determine whether the member can proceed on the charges and, if the Union does proceed, would be authorized to represent the employee against itself. Such a requirement is inherently coercive of employees' rights to bring Board charges. Even with regard to charges against an employer, the language essentially precludes employees from bringing charges with which the Union disagrees. Therefore, the paragraph violates Section 8(b)(1)(A) because it impinges upon employees' right of access to the Board.

Accordingly, absent settlement, the Region should issue complaint seeking that the Union be ordered to cease and desist from utilizing the unlawful paragraph in its "Special Official Application for Membership."<sup>14</sup>

B.J.K.

---

<sup>14</sup> We note that the paragraph at issue here could be saved if the term "irrevocably" were eliminated and if the filing of Board charges were listed as an explicit exception to the designation of the Union as the members' exclusive agent.