

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

Advice Memorandum

DATE: March 10, 2006

TO : Martin M. Arlook, Regional Director,
Region 10 536-2548
536-2561

FROM : Barry J. Kearney, Associate General Counsel 536-2581-3314
Division of Advice 548-6030-6725-1200

SUBJECT: International Longshoremen's Assn., Local 1414
Cases 10-CB-8319, -8320, -8333, -8356, -8357,
-8358, -8359, -8360, -8361, -8362, and -8363

These cases were submitted for advice as to whether the Union violated Section 8(b)(1)(A) and/or (2) of the Act in the operation of its exclusive hiring hall by: (1) charging an excessive hiring hall fee of non-member hiring hall users; (2) providing misleading and/or insufficient notice of hiring hall users' rights; and (3) filing and maintaining state court civil actions to collect such fees of non-member hiring hall users.

We agree with the Region that: (1) the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by charging an excessive service fee of non-member hiring hall users; (2) the Union violated Section 8(b)(1)(A) of the Act by its misleading notice to hiring hall users of their rights regarding hiring hall service fees; and (3) the Union violated Section 8(b)(1)(A) by filing and/or maintaining state court civil actions to collect hiring hall service fees for periods in which the defendants were non-members, without having given the defendants an accurate accounting of the fees they lawfully owed. The Region should dismiss all of the other allegations submitted for advice, absent withdrawal.

FACTS

International Longshoremen's Association, Local 1414 (the Union), operates an exclusive hiring hall for longshoremen at ports in Savannah, Georgia, pursuant to collective bargaining agreements with various employers and employer associations. Each referral from the hiring hall is for a job of short duration; longshoremen may be referred to employers several times in any given week.

The Union's membership passed its most recent union dues increase in 2003, providing that members pay 7% of their wages to defray the operation of the Union, with an additional 4% of wages set aside for contingencies such as

strikes, plus \$20.00 per quarter. The contingency or strike fund is paid out twice every contract year to members' credit union accounts, with one emergency fund application available to members per year. At the same time, the membership raised the hiring hall fee charged to non-members to the same 7% plus 4% level, but did not charge the additional \$20.00 per quarter. Of the 7% hiring hall service fee, five percent (5%) is allotted to the operations of the Union, with 2% allotted to a Building Fund for a planned new building that will house the hiring hall as well as the Union's offices. Notwithstanding whether or not dues or hiring hall service fees are paid via check off authorization, the Union and employees frequently refer to the 7% payments as "check off dues" or "check off service fees," even when they are not paid pursuant to a payroll deduction.

At the hiring hall, a notice is continuously posted on the bulletin board which states:

NOTICE

Check off dues are charged to all bargaining unit personnel. These fees are necessary to pay the expenses of operating the hiring hall. Non-members of ILA Local 1414 have the right to request information from said Local which verifies that all said fees are necessary to the operation of the hiring hall.

The Union also claims that it has made verbal announcements advising non-members of their right to request information to verify the hiring hall service fee since about April 2004.

The Charging Parties and the other named non-members at issue in the instant cases have worked as longshoremens within the Union's jurisdiction for various periods of time since at least the 1990's. All but two of them revoked their dues check-off authorizations and later resigned their Union membership; one retired some time after revoking his dues check-off authorization without ever resigning his Union membership, and the other resigned his membership first and then revoked his dues check-off authorization. None of the named non-members has paid any dues or fees to the Union through either check-off or other means since revoking his dues check-off authorization, even with regard to periods when they were members.

In August 2005,¹ the Union filed individual lawsuits in Georgia state court against the named non-members, seeking the delinquent 7% dues/service fees.²

In September through November, the charges in the instant cases were filed, alleging that the Union violated Section 8(b)(1)(A) and (2) of the Act by, inter alia: (1) requiring non-members to pay excessive hiring hall service fees in order to remain on the referral list; (2) failing to provide information relating to the operation of its exclusive hiring hall, in particular, failing to provide employees who use the hiring hall with notice and information as to: (a) their right to be a non-member and pay only a hiring hall service fee equal to the employee's pro rata share of hiring hall expenses; (b) the amount and basis for the calculation of such fees, including an audited financial disclosure of the Union's hiring hall expenditures; and (c) an adequate procedure by which non-members can challenge the amount and calculation of hiring hall service fees before a neutral arbitrator; and (3) filing lawsuits against certain named employees because they revoked their dues check-off authorization and refused to pay excessive hiring hall service fees to remain on the referral list.

After the filing of the charges in the instant cases, the Union's counsel filed a motion to stay all of the state court proceedings at issue, pending the outcome of the unfair labor practice charges here, expressed the Union's interest in consulting with the Region on appropriate language for the notice, and indicated the Union's willingness to cooperate with the Region to the extent that the non-member hiring hall fees are found to be excessive and it is required to reduce non-member fees to levels only sufficient to maintain the hiring hall.

The Region's investigation adduced evidence indicating that the Union's chargeability calculation had been properly audited, and that the Union had developed a procedure whereby its chargeability calculation could be challenged and appealed by any hiring hall user who disagreed with the Union's allocation of expenses. Only one of the named employees here ever requested financial

¹ All dates hereinafter are 2005, unless otherwise indicated.

² On December 2, counsel for the Union filed a motion to stay all the state court proceedings, pending the outcome of the instant unfair labor practice charges.

information from the Union -- the Union promptly provided it.

The Region's investigation also revealed, and the Union acknowledges, that the Union based its chargeability determinations on all of its representational expenses -- which it counted as 100% chargeable -- and not merely on the costs of operating the hiring hall. Thus, the Union is charging non-members for significant expenditures not directly related to operating the hiring hall itself, with such expenditures ranging from large budget items such as welfare and benefit fund contributions, conferences, and travel, to smaller expenses such as supporting employee sports teams, a benefit golf tournament, and charity scholarships.

ACTION

We agree with the Region that: (1) the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by charging an excessive service fee of non-member hiring hall users; (2) the Union violated Section 8(b)(1)(A) of the Act by its misleading notice to hiring hall users of their rights regarding hiring hall service fees; and (3) the Union violated Section 8(b)(1)(A) by filing and/or maintaining state court civil actions to collect hiring hall service fees for periods in which the defendants were non-members, without having given the defendants an accurate accounting of the fees they lawfully owed. The Region should dismiss all of the other allegations submitted for advice, absent withdrawal.

Excessive Fees

Initially, we agree with the Region that the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by charging an excessive hiring hall service fee to non-members.

It is well established that "a union is free to charge individuals referred for employment [through a hiring hall] a fee reasonably related to the value of the service provided,"³ and that the hiring hall fee must represent the non-members' pro rata share of the cost of operating the

³ Communication Workers Local 22 (Pittsburgh Press), 304 NLRB 868, 868 (1991), remanded 977 F.2d 652 (D.C. Cir. 1992).

hiring hall.⁴ Moreover, while the Board has adopted a discretionary rule that it will not process a general allegation of excessive non-member hiring hall fees merely because non-member fees are "roughly equivalent" to union membership dues,⁵ we have previously concluded that hiring halls in states containing right to work laws must carefully assess fees to non-members so as to include only those costs, including costs of maintaining and policing the hiring hall contract, that are directly related to the operation of the hiring hall, and that charges for other activities are excessive and therefore unlawful.⁶ Where there is evidence of such unlawful charges, the Board will find a violation of Section 8(b)(1)(A) and 8(b)(2) of the Act.⁷

In the instant cases, there is clear evidence that non-members are being required to pay for more than their pro rata share of the costs of operating the hiring hall. Thus, not only did the Union expressly base the 7% hiring hall service fee on its membership dues structure, without using any prior chargeability calculations in determining that figure, and not only does the Union claim 100% of its 2% building fund fee as chargeable, even though it admits that the building will have uses additional to the mere operation of the hiring hall, but the Union itself acknowledges that its chargeability determination is not based on the costs of operating the hiring hall, but is instead based on all of its representational expenses -- which it counted as 100% chargeable. While payment of general representational expenses may lawfully be required of objecting non-members under a union security agreement, a union may not charge non-member hiring hall users such fees in the absence of a valid union security agreement as here. Rather, in these circumstances, a union may only charge non-members for their pro rata share of costs

⁴ Morrison-Knudsen Co., 291 NLRB 250, 251 (1988); IATSE, Local 640 (Associated Independent Theatre Co.), 185 NLRB 552, 558 (1970); Local 825, Operating Engineers (Homan), 137 NLRB 1043, 1044 (1962) (contract specified that non-members would pay a pro rata amount of the hiring hall expenses).

⁵ Homan, 137 NLRB at 1044.

⁶ See, e.g., Inlandboatmen's Union, Case 19-CB-8229, et al., Advice Memorandum dated June 4, 1999, at 4-10.

⁷ See, e.g., Morrison-Knudsen Co., 291 NLRB at 251.

directly related to the operation of the hiring hall, and nothing more.⁸ Therefore, by charging for all representational costs, the Union violated Section 8(b)(1)(A) and (2) of the Act.

In order to determine what percentage of its expenses may lawfully be charged of non-member hiring hall users, the Union must recalculate its chargeability determination based upon what percentage of its expenses are directly related to the operation of the hiring hall, not what percentage of its expenses are representational. Examples of such legitimate charges would include the salaries of Union officials who operate the hiring hall, to the extent they spend their time on hiring hall operations, the expenses involved in processing applications, referring employees, and resolving pay discrepancies and grievances concerning hiring hall referral issues, and any overhead expenses directly related to operating the hiring hall itself, including building fund expenses, to the extent they are directly related to operating the hiring hall in the building.⁹ If any questions arise regarding the

⁸ In this regard, we reject the Union's argument that it can charge for representational expenses because all rights and benefits under the collective-bargaining agreement are identical for members and non-members, and that all bargaining unit employees are represented equally by the Union in the negotiation and administration of the collective-bargaining agreement, including receiving the same contractual pension, medical, vacation, holiday, and seniority benefits, including payments from the Container Royalty and Vacation/Holiday funds (Union officers act as trustees on jointly managed boards for each of these funds). The Union's argument merely demonstrates that these expenses are indeed bona fide representational expenses. As discussed above, however, a union may not charge hiring hall users who do not choose to become or remain members for such representational expenses.

⁹ We note that, while the Board historically treated building fund payments as assessments that could not be charged as periodic dues, it has since clarified that it will no longer apply such a distinction, and will analyze the chargeability of building funds the same way it does all other payments generally required of bargaining unit members. IBEW, Local 48 (Kingston Constructors, Inc.), 332 NLRB 1492, 1495-1496 (2000), *enfd.* 345 F.3d 1049 (9th Cir. 2003). See also CWA, Local 9510 (Pacific Bell), Case 21-

chargeability of any particular hiring hall expenses during settlement negotiations or the litigation of this matter, the Region should contact the Division of Advice.

Notice issues

We further agree with the Region that the Union violated Section 8(b)(1)(A) of the Act by its misleading notice to non-member hiring hall users of their rights regarding hiring hall service fees. The Office of the General Counsel has previously concluded that unions' duty of fair representation obligates a union that operates an exclusive hiring hall to inform non-members of their hiring hall service fee obligations and rights and, in particular, to provide notice to non-member hiring hall users of their right to request financial information that verifies that the hiring hall service fee is limited the pro rata share of the union's costs that are directly related to the operation of the hiring hall.¹⁰ This conclusion is based on the close analogy between the rights of non-member hiring hall users in the absence of a union security agreement, who have a right not to be members but may nonetheless be required to pay their pro rata share of hiring hall costs, and objecting non-members under a union security agreement, who have a right not to be full members pursuant to General Motors¹¹ who may be required to pay for representational costs pursuant to Beck¹² and its progeny. Thus, it was determined that similar considerations of balance and

CB-10623, Advice memorandum dated January 16, 1992, at 7 fn. 19 (building fund portion of dues properly chargeable to objecting non-members to the extent the building is used for representational activities). Thus, the percentage of chargeability of the Union's building fund should be based on the same considerations as all of the other expenses at issue here -- the percentage of such expenditures that are directly related to the operation of the hiring hall.

¹⁰ International Alliance of Theatrical Stage Employees, Local 835, AFL-CIO (various employers), Case No. 12-CB-4746, General Counsel's Minute dated March 18, 2002, at 4-6. In that case, it was also concluded that the union's financial information must be independently audited. Id., at 4.

¹¹ NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963).

¹² CWA v. Beck, 487 U.S. 735 (1988).

fairness to those that require unions to give notice of General Motors and Beck rights before exacting dues pursuant to a union security clause support requiring unions to give notice to non-member hiring hall users of their rights regarding hiring hall fees.

In the instant cases, by referring to non-member hiring hall fees as "check-off dues," the Union may have misled some non-members to believe that: (1) they were required to pay full "dues," despite their non-member status and the absence of a union security agreement; and (2) they were required to remit their fees by check-off, and not any other method of payment. This language, therefore, does not meet the Union's obligation to adequately inform hiring hall users of their rights in these regards. We recognize that the Union and employees apparently informally refer to hiring hall fees as "check-off dues," but the Union's duty of fair representation to hiring hall users requires it to inform employees of their hiring hall rights with greater precision. Therefore, we agree with the Region that the Union violated Section 8(b)(1)(A) of the Act by its misleading notice to non-member hiring hall users of their rights regarding hiring hall service fees.

In addition, we agree with the Region that the Union's notice did not violate the Act in other respects. Thus, the Region should dismiss the allegations that the Union's method of providing notice was inadequate, and that the Union was required to include in its notice explicit reference to the fact that its calculation of chargeable hiring hall fees had been audited and/or that the Union had an appeal procedure by which employees could challenge chargeability determinations.

As to the method of notice, we note that it was previously determined that: "[n]o single method of notification, such as the mailing of letter or the posting of a notice in the hall, should be imposed on all exclusive hiring halls. Rather, unions operating exclusive hiring halls should fashion some written form of notice to non-members of their right to request information verifying that the entire service fee payment is germane to the operation of the hiring hall."¹³ In the instant cases, the Union's posted bulletin board notice clearly stating that right was a sufficient method of notice, as all affected

¹³ International Alliance of Theatrical Stage Employees, Local 835, AFL-CIO (various employers), Case No. 12-CB-4746, General Counsel's Minute dated March 18, 2002, at 6.

employees came to the hiring hall for their job referrals and the bulletin board posting was a reasonable method of reaching all such employees.

As to the contentions that, prior to any employee request, the Union was required to provide financial information, announce that such information had been audited, and/or set forth challenge and appeal procedures regarding such calculations, we agree with the Region that the Union had no such obligations in the absence of a request for such information. The Union clearly informed all hiring hall users of their right to request information "which verifies that all said fees are necessary to the operation of the hiring hall." It also had its chargeability calculation audited and developed challenge and appeal procedures should any questions arise regarding chargeability determinations. These actions clearly met the Union's basic notice requirements; if an employee subsequently requested additional information, at that point the Union's duty of fair representation would require it to provide it. Significantly, where a non-member sought such information here, the Union promptly provided it. Thus, we agree with the Region that, other than the misleading language in the notice regarding "check-off dues," the Union met its statutory notice requirements to hiring hall users.

State court lawsuits

Finally, we agree with the Region that the Union violated Section 8(b)(1)(A)¹⁴ of the Act by filing and/or

¹⁴ The lawsuits did not violate Section 8(b)(2) as they were unrelated to the defendant's job status, and did not cause or attempt to cause any employer discrimination. Thus, although the underlying demand for excessive fees violated Section 8(b)(1)(A) and 8(b)(2) because it established an unlawful requirement for using the exclusive hiring hall and therefore directly linked the fees to referral for employment, the lawsuits themselves only violated Section 8(b)(1)(A) because they only sought the collection of the accrued debt and, while based upon the unlawful fee demand, did not threaten any effect upon the defendants' employment. See, e.g., Inlandboatmen Union (Dillingham Tug), 276 NLRB 1261, 1271 (1985) (finding Section 8(b)(1)(A) violation as to lawsuit to collect improper fine and 8(b)(2) violation as to request for discharge). See also Food & Commercial Workers Local 951, 7, & 1036 (Meijer, Inc.), 329 NLRB 730, 730 fn. 4, 756 (1999) (ALJ

maintaining state court civil actions to collect hiring hall service fees for periods in which the defendants were non-members, as the Union had not given the defendants an accurate accounting of the fees they lawfully owed.¹⁵ The Union could not lawfully seek to use the courts to collect any hiring hall fees from non-member hiring hall users in the absence of an accurate allocation of the fees that limited fees to the cost of expenses directly related to the operation of the hiring hall.¹⁶ The filing and maintenance of these suits sought to enforce the collection of improperly and unlawfully assessed hiring hall fees, as discussed above, and thus further violated the Union's duty of fair representation.¹⁷

finding violation of Section 8(b)(1)(A), but not 8(b)(2), "in support of which no argument has been advanced").

¹⁵ The lawsuits did not violate the Act insofar as they sought collection of unpaid dues that employees owed from periods of Union membership, as was the case with regard to all but one of the named defendants. Thus, the Region must make it clear that the unlawful objective in the lawsuits is limited to any periods in which a defendant was not a member of the Union, regardless of the date on which the civil action commenced. The Union was entitled to collect membership dues, and it did not violate its duty of fair representation by seeking delinquent dues owed for earlier periods of membership, even after the individuals had subsequently resigned their membership.

¹⁶ In this regard, see Meijer, Inc., 329 NLRB at 730 fn. 4, 756 (ALJ found that lawsuit seeking to enforce arbitration award of excessive Beck fees violated Section 8(b)(1)(A) "[b]ased upon the underlying failure to disclose allocation of the International's expenditures and, as well, the inclusion of [non-chargeable] expenses as a chargeable item").

¹⁷ While the lawsuits at issue were unlawful in the absence of a proper accounting of hiring hall fees due, we note that there would be no bar to the Union's subsequently seeking the collection of lawfully-owed hiring hall fees for expenses directly related to the operation of the hiring hall. If any employees failed or refused to pay such fees after a proper accounting, the Union would be entitled at that point to commence any future lawsuit to seek such lawfully demanded fees, including the

There is no Bill Johnson's Restaurant bar to such complaint allegations, as the Union's filing and maintenance of lawsuits seeking hiring hall fees in the absence of a proper accounting has an illegal objective within the meaning of footnote 5 of that opinion, which cited cases where unions had sued to enforce unlawful fines.¹⁸ In such cases, the Board has found violations without any inquiry into the legal or factual reasonableness of the lawsuits' allegations.¹⁹ Therefore, the Region should issue complaint alleging that the Union's filing and/or maintaining state court civil actions to collect hiring hall service fees for periods in which the defendants were non-members, without having given the defendants an accurate accounting of the fees they lawfully owed, violated Section 8(b)(1)(A) of the Act.²⁰

appropriately calculated fees from periods at issue in the lawsuits in the instant cases.

¹⁸ Bill Johnson's Restaurant, Inc. v. NLRB, 461 U.S. 731, 737-738 fn. 5 (1983).

¹⁹ See, e.g., Laundry, Dry Cleaning, Government and Industrial Service, Local 3 (Association of East Bay, West Bay and Peninsula Dry Cleaners), 275 NLRB 697 (1985) (lawsuit to collect fines imposed on employees after they resigned from the union violated 8(b)(1)(A)); American Postal Workers (Postal Service), 277 NLRB 541 (1985) (lawsuit to collect expenses of processing non-members grievance violated 8(b)(1)(A)); Teamsters Local 705 (Emery Air Freight), 278 NLRB 1303 (1986), enf. denied and remanded 820 F.2d 448 (D.C. Cir. 1987) (grievance filing, 301 suit and threats violated 8(b)(4)(B)); Electrical Workers IBEW Local 113 (Pride Electric), 283 NLRB 39, fn. 2 (1987) (lawsuit to collect fine against supervisor violated 8(b)(1)(B)). See also American Pacific Concrete Pipe Co., 292 NLRB 1261, 1262 (1989) (employer's state court lawsuit, which was inconsistent with a Board backpay order, was preempted and violation of Section 8(a)(4) could be found pursuant to Bill Johnson's Restaurant, 461 U.S. at 737-738 fn. 5).

²⁰ [FOIA Exemptions 2 and 5

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by charging an excessive service fee to non-member hiring hall users, and that the Union violated Section 8(b)(1)(A) of the Act by its misleading notice to hiring hall users of their rights regarding hiring hall service fees, and by its filing and/or maintaining state court civil actions to collect hiring hall service fees for periods in which the defendants were non-members, without having given the defendants an accurate accounting of the fees they lawfully owed. The Region should dismiss all of the other allegations submitted for advice, absent withdrawal. [FOIA Exemptions 2 and 5

.]

B.J.K.