

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

Advice Memorandum

DATE: May 30, 2002

TO: James J. McDermott, Regional Director
Byron B. Kohn, Regional Attorney
Tony Bisceglia, Assistant to the Regional Director
Region 31

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

SUBJECT: International Brotherhood of Teamsters,
Local 399 (Paramount Studios) 542-0125-5000
Case 31-CB-10869 542-3367-0150
542-3367-6750
542-3367-6767
542-6770
542-7550
712-5028-7514-5000

This Section 8(b)(1)(B) case was submitted for advice as to whether the Union violated the Act when it suspended from membership and fined an Employer supervisor/Union member for his interpretation of a provision of the collective bargaining agreement which the Employer now asserts was an interpretation the Employer did not endorse.¹ We conclude that the Union's discipline of its supervisor-member is unlawfully coercive and complaint should issue, absent settlement.

FACTS

International Brotherhood of Teamsters, Local 399 (the Union) represents drivers employed by Paramount Studios (the Employer). Charging Party Boyd was a Transportation Coordinator for the Employer on the production "Seven Days" and is a member of the Union. As the Transportation Coordinator, Boyd monitored the work schedules of the drivers, including "forced-call" payments provided for in Section 10: "Golden Hour Provisions" of the parties' collective bargaining agreement. This provision entitles drivers to receive various premium hourly rates of pay over their regular hourly rate of pay, i.e., double or triple hour pay, when they worked in excess of fourteen

¹ The Region did not submit for advice the issue of whether Charging Party, Steven Boyd, is a Section 8(b)(1)(B) representative as that issue was resolved by the Office of Appeals in a related charge. International Brotherhood of Teamsters, Local 399 (The 413 Project), Case Nos. 31-CB-10799 and 31-CB-10869, Agenda Minute, December 17, 2001.

consecutive hours. Generally, employees were entitled to these Golden Hour rates until they received a full eight-hour rest period.

Boyd asserts that he and Employer's Transportation Department Manager, Bill Harden, agreed that Boyd would record forced-calls, without explicitly showing forced-calls on employees' timesheets, by tallying the total hours of pay that employees were entitled to under the agreement's provisions. Thus, employees' timesheets would indicate more hours than employees had actually worked but would not indicate that the hours resulted from forced-calls or how those payments were calculated.

From February 1998 through sometime in November 1998, Boyd recorded employees' time accordingly. In September 1998, the Union filed a grievance against the Employer for failure to follow the Golden Hours provision of the collective bargaining agreement.² Boyd states that after the Union filed its grievance, a representative from Employer's Human Resources Department spoke with him about his time recording practices. Sometime in November, the Employer and the Union reached a settlement of the grievance and the Employer agreed to recalculate drivers' pay and several drivers were issued checks for lost wages allegedly resulting from Employer's failure to explicitly record forced-calls. Employer also agreed to change its method of recording forced-calls to explicitly record forced-calls on drivers' time cards.

On February 14, 2000, the Union notified Boyd that internal charges had been filed against him by John Tuell, a driver. Boyd was alleged to have violated several provisions of the Union's Constitution and Bylaws, including a provision requiring that "[n]o member shall work for less than wages, hours and working conditions" provided for in the parties' collective bargaining agreement, and to have violated the forced-call provision of the parties' collective bargaining agreement.

On August 21, 2000, a hearing before a Union's trial panel was held. Boyd was unable to attend and submitted a written statement. The trial panel found Boyd guilty of the charges of violating the contractual requirements on payment of forced-calls. The trial panel recommended that Boyd receive a fine of \$1,000 and be suspended from Union membership for thirty days.

² The Region indicates that the Employer claims that it was not aware of Boyd's method of recording forced-calls until the Union filed its grievance.

On November 8, 2000, the Union's Executive Board adopted the recommendation of the trial panel. On November 14, Boyd appealed that decision and the President of the International Union stayed Boyd's suspension and fine pending resolution of the appeal.

ACTION

We conclude that a Section 8(b)(1)(B) complaint should issue, absent settlement.

The Board has long held that by fining and suspending a supervisor for the manner in which he interprets a contract, a union violates Section 8(b)(1)(B) because such conduct is considered to restrain or coerce an employer in the selection of its representative for the purposes of collective bargaining or adjustment of grievances.³ In IBEW, Local 340,⁴ the Supreme Court held that a Union's discipline of one of its members who is a supervisory employee can constitute a violation of Section 8(b)(1)(B) only when that discipline is for behavior that occurs while the supervisor is performing the duties of and acting in his capacity as grievance adjuster or collective bargainer on behalf of the employer.

In the instant case, the Employer clearly conferred on Boyd the authority to monitor work schedules of the drivers, including the forced-call policies pursuant to the parties' collective bargaining agreement. In fact, Boyd asserts that he had express approval from his supervisor for the method he used in recording forced-calls. Moreover, even if Employer was not aware of or did not endorse Boyd's interpretation of the contract, Boyd clearly was acting within his authority as Employer's supervisor in interpreting the collective bargaining agreement on behalf of the Employer.⁵

³ See e.g., San Francisco-Oakland Mailers' Local 18 (Northwest Publications), 172 NLRB 2173 (1968); Florida Power & Light v. Electrical Workers Local 641, 417 U.S. 790, 805 (1974) (assuming, but without deciding, that the Board's Oakland Mailers' decision fell within the "outer limits" of Section 8(b)(1)(B); American Broadcasting Cos. v. Writers Guild, 437 U.S. 411, 429-30 (1978) (upholding Oakland Mailers' indirect coercion test).

⁴ NLRB (Royal Electric) v. IBEW, Local 340, 481 U.S. 573 (1987).

The fact that the Employer, after settling a grievance with the Union, asserts that it was unaware of how Boyd was recording the forced-call time or that it disagrees with the manner in which Boyd recorded the forced-call time, does not warrant a contrary conclusion. The Union clearly disciplined Boyd for his conduct prior to Employer and Union resolving the grievance and the Employer cannot retroactively take away a supervisor-member's authority.⁶ Thus, since Boyd acted within his scope of authority in recording forced-calls in the manner he did, the Union is prohibited from interfering with this activity,⁷ even if the Employer subsequently claims that such an interpretation is contrary to its view.⁸

In Local 702, Electrical Workers (Coulterville Tree Service), 219 NLRB 251 (1975), the Board dismissed a Section 8(b)(1)(B) complaint against a union which had disciplined a supervisor-member for refusing to abide by a grievance settlement between the union and the employer. Coulterville is distinguishable from the instant case, however, because there the Union disciplined a supervisor-member for conduct which was contrary to the Employer's express directions and the Union knew that the supervisor-member was interpreting the contract provision contrary to the Employer's interpretation. Here, there is no evidence that the Employer communicated to Boyd that his actions were contrary to its expressed wishes or that the Employer communicated to the Union that Boyd was acting beyond his authority in interpreting the provision of the contract,

⁵ See generally Collectramatic, Inc., 267 NLRB 866, 871 (1983) (Employer bound by acts and statements of its supervisors whether specifically authorized or not, citing Section 2(13)).

⁶ The record indicates that after the Employer and the Union settled their grievance, Boyd followed the agreed-upon procedures of explicitly recording forced-calls on drivers' time cards.

⁷ See also Construction, Production Laborers' Local 383 (Chanen Construction), 221 NLRB 1283, 1288 (1975).

⁸ Cf. IBEW Local 77 (Bruce-Cadet), 289 NLRB 516, 519 n.9 (1988) (union contended it fined supervisors for performing certain work, rather than for interpreting the contract and determining they could do the work; fact that union and employer later agreed that unit employees were entitled to the work supports the conclusion that the contract had to be interpreted and that supervisors were fined for their interpretation), enf'd. 895 F.2d. 1570 (9th Cir. 1990).

unlike the supervisor in Coulterville who was "no longer acting in a manner consistent with his authority" as the employer's Section 8(b)(1)(B) representative, 219 NLRB at 251.

Thus, the Union's discipline of its supervisor-member is coercive because Boyd possessed the authority to perform 8(b)(1)(B) duties and the Union imposed a fine and suspension on him solely because of his contractual interpretation of the forced-call provision.

For all of the above reasons, a Section 8(b)(1)(B) complaint is warranted, absent settlement.

B.J.K.