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

Advice Memorandum

DATE: January 29, 2004

TO : Robert H. Miller, Regional Director
Region 20

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

SUBJECT: Teamsters Local 896 (Anheuser-Busch)
Case 20-CB-11999

536-2560
536-2581-3307-5045
548-6050-6701-5000
548-6050-6767
548-6050-6790

This case was submitted to Advice on the following issues relating to the Union's efforts to collect fees and dues from casual-type employees ("weekenders") at the Employer's facility: (1) whether the Union's use of a three-page, three-color "NCR" form, where the top page is an application for membership and the second and third pages are the required General Motors[1] and Beck[2] notices, was reasonably calculated to apprise non-member employees of their rights to remain non-members under General Motors and to object to the payment of certain dues under Beck; (2) whether the Union may properly threaten a weekender with discharge for failing to pay monthly dues under a union-security clause where the weekender is available for, but has not been offered, work by the Employer for the month in which dues were assessed; and (3) whether the Union provided a precise statement of the amount of dues owed and method of calculation under Philadelphia Sheraton Corp.[3] before threatening a weekender with discharge for failure to pay dues.

We conclude that the Region should issue a Section 8(b)(1)(A) complaint, absent settlement, alleging that: (1) the Union's form was not reasonably calculated to apprise employees of their General Motors and Beck rights, and that, therefore, the Union unlawfully threatened a weekender with discharge for failing to pay Union dues after inadequately notifying her of those rights; (2) the

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[1] NLRB v. General Motors Corp., 373 U.S. 734 (1963).

[2] Communications Workers v. Beck, 487 U.S. 735 (1988).

[3] 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir. 1963).

Union unlawfully threatened a weekender with discharge for failing to pay Union dues during months in which she was available for, but did not receive any, employment; and (3) the Union failed to provide the weekender with a precise statement of the amount of dues owed and the method of computation in determining that amount.

FACTS

Anheuser-Busch, Inc. (Employer) operates a brewery in Fairfield, California, which is located in Northern California. Teamsters Local 896 (Union) is the collective bargaining representative of production and maintenance employees employed in various Employer departments.[4] The union-security clause in the collective bargaining agreement between the Employer and the Union states, in relevant part, that "all employees … shall become and remain members in good standing of the Union as a condition of employment on or after the 31st day following the beginning of their employment … ." It further states that employees who fail to tender periodic dues and initiation fees required as a condition of acquiring and maintaining membership will be discharged seven days after receipt of notice of delinquency.

The Employer's facility operates on a continuous basis. Weekend and holiday shifts are covered by the following employees, in order: full-time employees who volunteer for overtime; weekend relief quality assurance analysts ("weekenders"); mandatory overtime; and seasonal employees or apprentices. Weekenders must notify the Employer of their availability for weekend work by Wednesday of each week.

Weekenders do not work towards seniority status and are not entitled to premium pay or any other employee benefit. They receive a case of beer each December.

In June 2001, Charging Party Catharine Anderson responded to an Employer advertisement soliciting applicants for weekender positions. The Employer interviewed Anderson, and then hired her on June 25, 2001. Anderson did not use a hiring hall to obtain the position and she has no other affiliation with a Union hiring hall.

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[4] The Union's jurisdiction covers both Northern and Southern California. The Union has no hiring hall arrangement with the Employer and does not operate a hiring hall, at least in Northern California.

In 2002, Anderson obtained at least one shift of work in all months except January and April. In 2003,[5] Anderson obtained no shifts of work in each month from January to March,[6] and at least one shift in each month from April to July.

Around March 7, 2002, the Union sent Anderson an invoice totaling $53, which included a $48 hiring hall fee and a $5 registration fee. The invoice also indicated that an initiation fee of $350 was due upon completion of thirty days worked, but no initiation fee was actually charged. There was also no charge for monthly union dues. The invoice threatened Anderson with removal from a hiring hall list if she did not submit payment immediately. A letter of information enclosed with the invoice stated that the Union charges a $48 hiring hall fee where employees work four or more days per month and requested that Anderson return an enclosed membership application ("application") and beneficiary card. Anderson never signed or returned the application and made no payment.

The application language is on the first page of a three-page form that is joined on one side and perforated along that edge to facilitate tearing off the top page, and on paper designed to copy writing from the first page to two pieces of carbonless paper underneath (a "no carbon required" or "NCR" form). The underlying two pages, one in yellow and the other in pink, contain identical notices of General Motors and Beck rights. The form is situated such that a signature and date written on the top sheet would automatically replicate on the signature and date lines on the bottom two sheets.

On October 31, 2002, the Union sent weekenders a letter informing them that the monthly union dues rate would be decreased from $62 to $34 effective January 1, purportedly to make the dues rate more commensurate with the amount of work available to weekenders.

On January 15, the Union sent Anderson an invoice for $517.00, which included a $62 monthly dues charge, a $5 registration fee, and a $450 initiation fee.[7] On March 24, the Union sent Anderson another invoice for $517.00 listing

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[5] All dates are in 2003 unless otherwise indicated.

[6] In March, Anderson had one hour of compensated training.

[7] According to the Union, it had increased the initiation fee from $350 to $450.

the same itemized amounts and demanding payment subject to discharge.

When Anderson received the March 24 invoice, she called Union Business Agent Hawthorne to tell him that she could not afford to pay the invoice amount. Hawthorne replied that "as a member," Anderson must pay monthly dues whether or not she received work, and that she should "pay something" to satisfy the Union or she would lose her job. On April 9, Anderson sent the Union $300 in partial payment.

On July 7, the Union sent Anderson another invoice totaling $371, which included Union monthly dues, itemized at $62 for July 2002 and $34 for each of the first six months of 2003 (including for January through March, when Anderson received no shifts of weekender work), a $5 registration fee, and a $450 initiation fee, less the $300 Anderson had sent.[8] The invoice did not specify to what the Union applied the $300 payment furnished by Anderson on April 9, and threatened to discharge her if she failed to immediately pay.

ACTION

We conclude that the Region should issue complaint, absent settlement, alleging that: (1) the Union's three-page form was not reasonably calculated to apprise non-member employees of their General Motors and Beck rights, and that the Union unlawfully threatened Anderson with discharge for failing to pay Union dues before adequately notifying her of those rights; (2) the Union unlawfully threatened Anderson with discharge for failing to pay monthly Union dues during months in which she was available for, but received no work; and (3) the Union repeatedly failed to provide Anderson with a precise statement of the amount of dues owed and the method of computation in determining that amount.

I. The Union's form was not reasonably calculated to apprise non-members employees of their General Motors and Beck rights.

A union's publication of Beck and General Motors notices is lawful if it is "reasonably calculated to apprise the non-member employees of their Beck [and General

[8] The total of itemized charges less Anderson's $300 payment is $421, $50 more than the invoice total. The Union provided no explanation for the discrepancy.

Motors] rights."[9] In California Saw & Knife Works, the Board found lawful the union's publication of an annual Beck notice because, although published within a newsletter that did not on its cover alert readers to the notice therein, it was highlighted in color distinct from other text and was set apart by a horizontal format with a highlighted outline containing the word "Notice" in bold print at the top. Moreover, this particular issue of the union newsletter was only twelve pages long, so that the Beck notice was "apparent from even a cursory review … ."[10] The Board thus found that the notice was not "hidden in a lengthy publication such that, without a cover notation, a non-member employee making any reasonable perusal of the publication would likely not be alerted to the Beck policy."[11]

In contrast, in UFCW Local 648 (Safeway, Inc.),[12] the Beck notice was printed in small, pale type on the back of the first page of a three-page membership application. We found that, unlike the California Saw notice, the notice there was "hidden" or "buried," and "not reasonably calculated to apprise" because a non-member would not be likely to read the back of the top copy of the membership application.

Similarly here, we conclude that the Union's Beck and General Motors notices are inadequate. As in the lawful notice in California Saw, the NCR copies of the General Motors and Beck notices clearly state "Notice." However, non-members would not be likely to peruse the NCR copies, in different colors, underneath the top page under the reasonable assumption that they were identical to the top page. Thus, as in Safeway, Inc., the notices here were hidden and not reasonably calculated to apprise non-members of their General Motors and Beck rights. Accordingly, complaint should issue, absent settlement, alleging that the Union breached its duty of fair representation and violated Section 8(b)(1)(A) when, on and after March 24, it threatened Anderson with discharge for failing to pay dues before adequately informing her of her General Motors and Beck rights.[13] We further conclude that, if there is

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[9] California Saw & Knife Works, 320 NLRB 224, 234 n.55 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998).

[10] Id.

[11] Id.

[12] Case 20-CB-11846, Advice Memorandum dated February 28, 2003.

evidence that, within the Section 10(b) period, the Union used the application form containing General Motors and Beck rights only on NCR sheets, when soliciting any unit employees covered by the union-security clause to join the Union, the complaint should further allege that the Union's use of the form in and of itself violated Section 8(b)(1)(A).

[*FOIA Exemption* 5

.] Accordingly, the Region should proceed with complaint, absent settlement, only against the local Union.

II. The Union unlawfully charged Anderson monthly dues for months in which she was available for but obtained no work because, without work, she received no compensation or any other emolument of employment to retain a link to the Employer.

A union's demand for the payment of back dues that arose during a period when an employee was not employed in the bargaining unit cannot lawfully be imposed as a condition of employment even under a valid union-security agreement.[14] When an employee is "not employed in the bargaining unit," no union dues are owed under a union-security clause, and a union may not threaten, seek, or cause the employee's discharge by invoking a union-security clause. Examples of such cases involve situations where an employee fails to pay dues while: laid off but remaining on a union's referral list;[15] employed outside the unit;[16]

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[13] See Teamsters Local 251 (Ryder Student Transportation), 333 NLRB 1009, n.3 (2001).

[14] See Carpenters Local 740 (Tallman Constructors), 238 NLRB 159, 160-61 (1978).

[15] See Painters Local 277 (Del E. Webb New Jersey), 278 NLRB 169, 171 (1986) (union unlawfully caused discharge of employee who refused to pay dues during period between referrals from the union); Carolina Drywall Co., 204 NLRB 1091, 1094 (1973) (union unlawfully threatened employee with job loss for nonpayment of dues during a period when he was unemployed).

and rendered "permanently unfit for duty" for health reasons.[17] A union may, however, lawfully threaten, seek, or cause an employee's discharge for failure to pay dues under a union-security clause where the employee failed to pay dues while: on lay-off from an employer but retaining employee status due to continued receipt of employee benefits;[18] employed in the same unit from which the union threatens or seeks the employee's discharge;[19] or out of work on workers' compensation.[20] The Board has not, however, considered whether a union may lawfully invoke a union-security clause to threaten, seek, or cause the discharge of a casual or other intermittently working employee for failing to pay dues during periods when the employee is not working, is not otherwise receiving compensation or a benefit of employment, and merely retains a place on an employer's roster of employees who are available for work.

Here, we conclude that the Union unlawfully charged Anderson monthly dues for months in which she was available for but did not obtain any employment within the unit, and unlawfully threatened her with discharge for failing to pay those dues because, during those months, she received no compensation or other benefit of employment. In the July 7 invoice, the Union charged Anderson dues for months including January and February, when she received no work

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[16] See Operating Engineers Local 501 (California Milk Producers), 306 NLRB 659, 661 (1992) (employee not liable for dues while working outside the unit from which the union sought the employee's suspension).

[17] See Seafarers International Union (Isthmian Lines, Inc.), 202 NLRB 657, 658 (1973), enfd. 496 F.2d 1363 (5th Cir. 1974).

[18] See Machinists Local 1561 (The Bendix Corp.), 205 NLRB 770, 771 (1973) (union may lawfully charge dues to laid-off employees who retained their employee status, which entitled them to their recall rights, and rights to accumulate seniority and receive accrued vacation benefits).

[19] See Mayfair Coat & Suit Co., 140 NLRB 1333 (1963) (employee failed to meet his union-security obligations arising from previous employment in the same unit).

[20] See Oklahoma Fixture Co., 308 NLRB 335, 338 n.4 (1992) (distinguishing dues obligations of employees out on workers' compensation from the obligations of employees who are "permanently unfit" for duty).

or consequent compensation. Therefore, the facts here are distinguishable from cases such as Oklahoma Fixture Corp., where employees acquired workers' compensation benefits, presumably funded by employer contributions, while on leave. Moreover, weekenders are not eligible for Employer fringe benefits. As a result, unlike in Bendix Corp., where laid-off employees retained their unit employee status through preserved recall rights, and rights to accumulate seniority and receive previously accrued vacation benefits while on lay-off, Anderson did not retain a link to the Employer as an employee during January and February sufficient to justify the Union's assessment of monthly dues under the union-security clause.[21] During these months, Anderson retained a nexus to the Employer solely due to her place on the roster of weekenders available to work.[22] Anderson's status as an individual available to work without receiving compensation or any other benefit is more closely analogous to the facts in Del E. Webb New Jersey, above, where the union unlawfully caused the discharge of an individual for failing to pay dues between referrals to jobs. Accordingly, the Union unlawfully threatened Anderson with layoff for failure to pay dues "for a period during which [she] was under no statutory obligation to remit to the Union in order to keep [her] job."[23]

III. The Union failed to provide Anderson with a precise statement of the amount of dues owed and its method of computation.

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[21] We conclude, however, that the Union lawfully charged Anderson dues for March, when Anderson obtained no actual weekender work, but participated in one hour of training for which she was compensated. Although Anderson retained a limited nexus to the Employer during this month, pursuant to Bendix Corp., 205 NLRB at 771, her receipt of compensation was sufficient to justify the imposition of dues as a condition of employment. On the other hand, we do not consider the Employer's annual gift of a case of beer to be an employee benefit that would retain a weekender's link to the Employer during months in which the weekender performs no work or receives no compensation for training.

[22] See Del E. Webb New Jersey and Carolina Drywall Co., supra.

[23] See Carolina Drywall Co., 204 NLRB at 1094-95. Cf. IBEW Local 3 (General Electric Co.), 299 NLRB 995, 1000 (1990) (union's prospective dues charge for six months when employment was only speculative was unlawful, akin to requiring dues when there is no contract in effect).

Under Philadelphia Sheraton Corp.,[24] a union has a fiduciary duty to provide an employee with a precise amount of dues owed and the time period in question, the method of computation, and a reasonable opportunity to meet the dues obligation before seeking the employee's discharge under a union-security clause. These requirements apply equally to union threats to cause the discharge of an employee for failing to pay dues.[25]

Here, the Union unlawfully failed to provide Anderson with a precise statement of dues owed and the method of computation before threatening her with discharge because the Union's four statements assessing Anderson dues and fees collectively created ambiguity as to the correct amounts due and to what the charges applied. For example, the Union's initial statement to Anderson on March 7, 2002 included a $48 hiring hall fee.[26] The subsequent January

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[24] 136 NLRB 888 (1962).

[25] See Machinists Local 9 (Borg-Warner Corp.), 237 NLRB 1278, 1278-79 (1978) (union failed to notify employee of his membership obligations, including an option to buy unemployment stamps while out on sick leave, before threatening employee with discharge for failing to pay reinstatement fee).

[26] The record indicates that the Union does not operate a hiring hall, at least in Northern California (although it is unclear whether the Union operates a hall in Southern California). We would thus conclude that the Union may not charge Employer employees a hiring hall fee, particularly where, as here, the Employer and Union have no hiring hall arrangement and the employee at issue is in no way affiliated with a Union hiring hall. See Teamsters Local 667 (Spector Freight System), 248 NLRB 260 (1980), enf. denied 660 F.2d 1015 (4th Cir. 1981) (union did not operate a bona fide referral system for which casual employees should have been required to pay any referral fees; such agreements are characterized by an agreement for the employer to notify the union as jobs become available, and the union to send sufficient manpower, but there, signatory employers directly contacted employees). Cf. IATSE Local 646, Case 12-CB-3321, Advice Memorandum dated Jan. 31, 1991 (where non-member worked out of union's non-exclusive hiring hall for several years and had signed a hiring hall referral agreement, union could charge non-member for costs associated with maintaining the hiring hall even where the non-member has not obtained jobs through the hall). Here, because the Union assessed the hiring hall fee outside of

15, March 24, and July 3, 2003 invoices did not include a hiring hall fee, but the Union has not clearly rescinded that fee. In fact, the Union as recently as July 3 sent weekenders an information sheet stating that they must pay a hiring hall fee each month in which they work four or more days. Thus, the Union's failure to clearly rescind the March 2002 hiring hall fee and continued declarations that such fees may be due and owing subject to discharge creates a lack of a precise statement of dues owed in violation of Section 8(b)(1)(A).[27]

The Union also failed to provide a precise statement of dues owed and method of computation in its July 3 statement of purported arrearages because it failed to specify to what amount the Union applied Anderson's April 9 payment of $300. This lack of specificity created further ambiguity as to the amount of, and how the Union computed, Anderson's alleged dues arrearages.[28]

Finally, the Union failed to inform weekenders, including Anderson, about the option to sign a withdrawal card to avoid their dues obligations. Although the Union asserts that Union Business Agent Hawthorne informed Anderson of this option in their March 24 conversation, Anderson refuted this claim. Thus, the Union's threat to then cause Anderson's discharge without adequately informing her of her membership obligations violated Section 8(b)(1)(A).[29]

In defense, the Union asserts that Anderson's non-payment of dues was a "cleverly designed ruse" to avoid her obligations under the collective bargaining agreement.

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the Section 10(b) period, and within that period the Union has not charged a hiring hall fee, we would not allege that the Union's March 7, 2002 threat to discharge Anderson for failing to pay this fee was unlawful.

[27] It is further unclear as to what the Union applies the $5 registration fee. If it applies to hiring hall registration, then the fee is unlawful because the Union does not operate a hiring hall in Northern California and the Employer and Union have no contractual arrangement to route weekenders through a hiring hall to the Employer for employment.

[28] See General Electric Co., 299 NLRB at 1000 (union failed to give employee a clear itemized breakdown of dues still owing after he provided a $100 payment).

[29] See Borg-Warner, supra note 25.

Under Board law, if a "free rider" consciously and willfully evades her dues obligations, a union may threaten, seek, or cause her discharge without fully complying with Philadelphia Sheraton.[30] This doctrine does not, however, apply when, as here, a union fails to provide basic notice of the amount owed.[31] Here, the Union failed to provide Anderson notice of her General Motors and Beck rights, and gave contradictory notices of the amount due. In any event, there is no evidence that Anderson consciously and willfully evaded her union-security obligations.[32] Accordingly, we reject the Union's defense.

For the above reasons, the Region should issue a Section 8(b)(1)(A) complaint, absent settlement, alleging that the Union breached its duty of fair representation to Anderson.

B.J.K.

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[30] See Operating Engineers Local 542C (Ransome Lift), 303 NLRB 1001, 1004 (1991); I.B.I. Security, Inc., 292 NLRB 648, 649 (1989) (failure to give time frame for payment immaterial where employee had notice of delinquency and employee willfully and deliberately sought to evade obligations).

[31] See Service Employees Local 32B-32J, 289 NLRB 632, 632 (1988) (employee who failed to pay dues not a "free rider" because the statement of arrearages included a month for which the employee owed no dues; union failed to maintain clear and accurate records of dues-payment status and failed to give clear notice of the precise amount owed).

[32] See also Teamsters Local 251 (Ryder Student Transportation), 333 NLRB 1009, n.3 (2001) (where union failed to give Beck and General Motors notices and there was no evidence employee would have refused to pay even the representational portion of monthly dues owed under the union-security clause, union violated Section 8(b)(1)(A) and (2) by requesting and causing employee's discharge).