

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

Advice Memorandum

DATE: June 30, 2005

TO : Victoria E. Aguayo, Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice 536-1200
536-2509-9300

SUBJECT: Teamsters Local 952, IBT, AFL-CIO 536-2581-6767-7800
(Albertson's Inc./Ralphs) 536-5075-0150
Cases 21-CB-13609, et al 650-8811-3300

These cases were submitted for advice concerning whether the Union violated Section 8(b)(1)(A) by disciplining members for crossing a sympathy picket line after informing them that it was their choice whether to cross; whether the Union violated Section 8(b)(1)(A) by fining and suspending members who crossed the picket line when they had not received notice of their rights under General Motors¹ and Beck;² and whether the Union unlawfully required employees to pay dues and fees under a union-security clause after issuing them lengthy suspensions. [FOIA Exemption 5

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We conclude that the Union unlawfully disciplined members after misrepresenting that it was their choice whether to cross the picket line, and that the Union unlawfully fined and suspended members who crossed the picket line because the Union had not provided them with notice of their General Motors and Beck rights. We further conclude that the Union did not unlawfully continue to accept financial core dues and fees from employees after issuing them lengthy suspensions. [FOIA Exemption 5

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FACTS

The Employers (Albertson's and Ralphs) operate food-distribution warehouses at Brea, Irvine, and La Habra, California. The Union (Teamsters Local 952) represents most of the employees at these facilities. The UFCW represents the meat and deli employees at the Albertson's Brea warehouse.

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

² CWA v. Beck, 487 U.S. 735 (1988).

Between October 2003 and February 2004, the Employers were involved in a labor dispute with UFCW. In early October 2003, the District Council³ to which the Union belongs sanctioned a UFCW strike against the Employers. During the week of October 6, the Union conducted a meeting of employees and informed them that the UFCW employees might be going on strike, and that the Union might join them. The Union told the employees that if it did join the strike, a Union representative would be on the picket line and the employees were not to cross.

In anticipation of picketing, Albertson's distributed a flyer to its Union-represented employees. The flyer explained that the Union could fine employees if they crossed the picket line unless they became financial core members. The leaflet also provided a sample letter that members could complete to resign from the Union and become financial core members.⁴

On October 12, 2003, the UFCW began to picket the Albertson's Brea facility after Albertson's locked out UFCW members. Some Union members crossed the picket line and returned to work. The picketing at the Brea facility lasted about two weeks. Beginning mid-October, the Union notified employees who crossed the Albertson's Brea picket line that they were being charged with "failing to honor a picket line sanctioned by [the Union]." About two weeks later, the Union provided the employees with notices of hearing dates for alleged violations of the Teamsters Constitution and the Union's bylaws resulting from their failure to honor the picket line.

On November 24, UFCW extended the primary picket line to all of the Employers' distribution centers. On that same date, the Union's secretary treasurer distributed a memorandum to the employees it represented. The memo provides in part:

³ Teamsters Joint Council No. 42.

⁴ The sample letter stated that "I, [name], hereby change my membership status in Teamsters Local 952 to that of 'dues paying member only' effective immediately. I will continue to pay the regular and periodic initiation fees and dues required by law or by the labor contract. . . ."

Joint Council of Teamsters No. 42 has sanctioned the UFCW picket line. . . . **[Y]our Contract protects you from discharge or disciplinary action should you elect to refuse to cross a lawful primary picket line sanctioned by Joint Council of Teamsters No. 42.** We have determined that the UFCW picket lines meet those criteria. [Emphasis in original.]

As you know, we have a Contract in place with your Employer. Our Contracts contain a "No Strike" pledge. We cannot call a strike at this time, and have no intention of doing so. You, as individuals, however have the ability to express your solidarity with the members of the UFCW, **should you chose to do so**, when these lawful primary picket lines are established. [Emphasis added.]

After these UFCW picket lines were established, additional employees crossed them and returned to work. Some employees resigned their union membership before returning to work, while others resigned after returning to work.⁵ Most employees used the draft language provided by Albertson's. The Union later accepted the resignations of all these employees.

The strike ended on February 24. Subsequently, the Union notified the employees who had crossed the UFCW picket line while members that they were charged with violating the International Brotherhood of Teamsters (IBT) Constitution and Local 952 Bylaws.

Following the hearings on the charges, all but one of the employees were found to have violated the IBT Constitution and Union Bylaws. The Union fined employees in amounts ranging from \$200 to \$7,400, based on the wages and benefits they earned while they worked behind the picket line. The Union also suspended employees from the Union for periods ranging from 8 to 15 years. The vast

⁵ The timing of some employees' resignations is unknown.

majority were suspended for 15 years, and a few employees were suspended indefinitely.⁶

The Charging Parties allege that the Union has never advised them of their rights under General Motors⁷ to become financial core members, or their rights under Beck⁸ to be fee objectors. The Union contends that it did supply all represented employees with the requisite notices, but has supplied no evidence to substantiate its contention.

ACTION

We conclude that the Union violated Section 8(b)(1)(A) by misrepresenting to members that it was their choice whether to cross the picket line and then penalizing employees who crossed, and by fining and suspending members who crossed the picket line when the Union had not provided them with notice of their General Motors and Beck rights.⁹

⁶ The Union has not sought to enforce any of these sanctions.

⁷ 373 U.S. 734.

⁸ 487 U.S. 735.

⁹ As a preliminary matter, we agree with the Region that the no-strike provision in the collective-bargaining agreement did not prohibit the Union from ordering its members to honor the sympathy strike. See Indianapolis Power Co., 291 NLRB 1039, 1041 (1988) (in analyzing whether the language of the contract evidences an intent by the parties to prohibit sympathy strikes, the Board looks to the breadth of the no-strike clause itself, as well as to the location of the no-strike clause in the general agreement). The agreement here not to engage in any form of economic activity is located in the Grievance and Arbitration sections of the parties' agreements, and narrowly prohibits any form of economic activity arising out of "the interpretation or application of the provisions of" the agreement. Further, the contract contains a separate picketing provision, which states that no employee will be discharged or disciplined for refusing to cross "a legitimate, bona fide, primary picket line sanctioned by [the Union]."

We further conclude that the Union lawfully continued to accept financial core dues and fees from employees after issuing them lengthy suspensions. [FOIA Exemption 5 .]

I. The Union violated Section 8(b) (1) (A) by misrepresenting to members that it was their choice whether to cross the picket line

A union's statutory duty to fairly represent all employees includes the obligation to serve the interests of all members without hostility or discrimination, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.¹⁰ That duty of fair representation forbids a union to "purposely keep an employee uninformed or misinformed" about issues over which the union has a fiduciary obligation to the employee.¹¹

In the instant case, the Union's secretary treasurer distributed a letter to the Union's members on November 24 clearly indicating to them that it was their choice whether to observe the UFCW picket line. The letter stated that "[y]ou, as individuals . . . have the ability to express your solidarity with the members of the UFCW, should you choose to do so, when these lawful primary picket lines are established." The letter cited no Union rules against crossing the picket line and included no potential consequences or penalties for members who decided to cross. Despite these assurances, when employees decided to cross the picket line and return to work, the Union responded by fining those employees and suspending them from Union membership. By thus misrepresenting to members that it was their choice whether to honor the UFCW picket line and then penalizing employees who crossed,¹² the Union acted

¹⁰ Vaca v. Sipes, 386 U.S. 171 (1967).

¹¹ See United Autoworkers Local 417 (Falcon Industries), 245 NLRB 527, 534 (1980) (union's duty of fair representation "imposed on it the duty not to purposely keep [employee] uninformed or misinformed concerning" her grievance).

¹² See IAM Local 1414 (Neufeld Porsche-Audi), 270 NLRB 1330, 1333 (1984) (Section 7 grants employees the right to

arbitrarily, and failed to serve its members with complete good faith and honesty.¹³

We are aware that at meetings in October, the Union told employees that if the Teamsters decided to support the strike, employees were expected not to cross the picket line. Thus, the Union arguably had in fact notified employees about the potential consequences for crossing the picket line prior to the November 24 letter and thus did not misrepresent its position. However, the November 24 letter clearly purported to represent the Union's official position regarding the issue, and the employees reasonably would have relied upon it: the letter was the Union's most recent statement of position since it was made on the day of the main strike; it was distributed to all bargaining unit employees; and it was a written document signed by the secretary treasurer of the Union.¹⁴ In any event, to the extent that the Union gave conflicting messages that left some ambiguity regarding its position whether members were free to cross the picket line, that ambiguity must be construed against the Union.¹⁵ Accordingly, the Union violated Section 8(b)(1)(A) by misinforming employees of their obligations, as Union members, to honor the picket

refrain from "any or all" protected concerted activities, which includes the right to refrain from strikes).

¹³ Vaca v. Sipes, 386 U.S. at 177.

¹⁴ As to those employees who were fined for crossing before this letter issued, this theory of violation would not apply. However, to the extent they had not received General Motors and Beck notices, the theory of violation set forth in the next section would apply.

¹⁵ See Teamsters Local 579 (Northern Conveyor), 274 NLRB 100, n. 1, 107 (1985) (union violated Section 8(b)(1)(A) by imposing discipline against employee who withdrew his membership and crossed the picket line on the belief that he had resigned from the union, where the union's rules were ambiguous regarding whether submission of a withdrawal card had the effect of a resignation; any ambiguity created in this situation is construed against the union).

line, then imposing penalties on them after they crossed the picket line.

II. The Union violated Section 8(b)(1)(A) by disciplining employees who crossed the picket line without first giving them notice of their GM and Beck rights

Section 7 grants employees the right to refrain from "any or all" protected concerted activities, which includes the right to refrain from strikes.¹⁶ Although a union may validly impose a rule prohibiting its members from crossing a picket line during a properly called strike, that power ends when the member resigns.¹⁷ Thus, a union's imposition of fines or penalties based on an employee's post-resignation conduct of working during a strike violates Section 8(b)(1)(A).¹⁸

A union breaches its duty of fair representation when it fails to notify unit employees of their rights under General Motors¹⁹ to become or remain financial core members of the Union, and of the rights of nonmembers under Beck²⁰ to object to paying for union activities that are not germane to the Union's duties as collective-bargaining agent.²¹ The appropriate remedy for a union's failure to

¹⁶ IAM Local 1414, 270 NLRB at 1333; Miscellaneous Drivers and Helpers Local 610 (Browning-Ferris Industries), 264 NLRB 886, 898 (1982).

¹⁷ IAM Local 1414, 270 NLRB at 1333-1334; Misc. Drivers, 264 NLRB at 898.

¹⁸ Misc. Drivers, 264 NLRB at 898.

¹⁹ 373 U.S. 734.

²⁰ 487 U.S. 735.

²¹ Rochester Mfg. Co., 323 NLRB 260 (1997), *enfd.* 194 F.3d 1311 (6th Cir. 1999) (Table). See also Paperworkers, Local 1033 (Weyerhaeuser), 320 NLRB 349, 350 (1995), *revd.* on other grounds *sub nom.* Buzenius v. NLRB, 124 F.3d 788 (6th Cir. 1997) (union breaches duty of fair representation when it fails to provide unit employees, whether members or nonmembers, with notice "of the statutory limits on union-

provide Beck and General Motors notice is the right to retroactively resign from the Union.²² In Rochester Mfg. Co.,²³ the Board held that, in order to fully restore the status quo ante, the appropriate make-whole relief should include "nunc pro tunc reimbursement" of all nonrepresentational dues to employees who failed to receive such notification and who elect to become nonmember objectors after receiving notice of their rights, retroactive to the time period covered by the complaint.²⁴

Applying the Rochester principle, Advice concluded in International Brotherhood of Teamsters (UPS) et al²⁵ that members who choose to retroactively resign their union membership may not be disciplined by their union for having crossed a picket line during that time period. In that case, the union unlawfully fined employees who had crossed a picket line at a point in time when they were unaware of their General Motors and Beck rights.²⁶

In the instant case, the Union penalized employees for crossing the picket line, even though it had never informed them of their General Motors rights to become nonmembers, or their Beck rights, as nonmembers, to object to paying for activities outside of the Union's financial core duties. Thus, applying Rochester Mfg. Co. and International Brotherhood of Teamsters (UPS), above, the

security obligations" as set forth in Beck and General Motors prior to obligating them to pay dues under the union-security clauses).

²² Rochester Mfg. Co., 323 NLRB at 263.

²³ Id.

²⁴ Id. at 262-263. See also Teamsters Local 738 (E.J. Brach), 324 NLRB 1193, 1194 (1997); Service Employees Local 74 (Parkside Lodge), 323 NLRB 289, 290 (1997).

²⁵ Cases 4-CB-7972 et al., Advice memorandum dated March 10, 1998.

²⁶ See also UPNA of Lockport Memorial Hospital (Lockport Memorial Hospital), Case 3-CB-7988-1, General Counsel's Appeal Minute dated March 28, 2003.

Union violated Section 8(b)(1)(A) by penalizing its members for crossing the picket line at a point in time when they were unaware of their General Motors and Beck rights.

III. The Union lawfully continued to accept financial core dues and fees from employees

Where "a union terminates, even lawfully, a unit employee's membership for a reason other than failure to tender dues and fees, the union thereafter is precluded from insisting, under the terms of the union-security clause, that the employee remit dues and fees to it as a condition of continued employment."²⁷ That is because under proviso (B) to Section 8(a)(3), an employer may not discriminate against employees for denial of membership for reasons other than failure to pay dues. Since a union's attempt to cause such a discharge would have violated Section 8(b)(2), its threat to do so coerces the employee whose membership was terminated in his/her Section 7 right to refrain from supporting the union.²⁸

The Board has held that indefinite or lengthy suspensions from union membership are so akin to termination of union membership that a union also violates Section 8(b)(1)(A) by invoking the union security clause and seeking the discharge of employees on indefinite or 15-year suspensions. In Dillingham Tug,²⁹ for example, the union sought and obtained the discharge of an employee who had refused to pay his financial core dues after the union suspended him for 15 years due to his activities in supporting a rival union. The Board concluded that by seeking and obtaining the employee's discharge, the union violated Section 8(b)(1)(A) by invoking the union-shop provisions of its collective-bargaining agreement to cause

²⁷ Transportation Workers Union (Johnson Controls), 326 NLRB 8, 8 (1998) (union violated Section 8(b)(1)(A) by threatening to invoke the union-security clause against employee who had been permanently excluded from union membership).

²⁸ Id. at 9.

²⁹ Dillingham Tug, 278 NLRB 83, 85-86 (1986).

the discharge of an employee who was denied membership on grounds other than a failure to pay periodic dues.

The Dillingham Tug rule, which prohibits the insistence on union dues from employees who have been suspended from membership, does not apply here. That is because, in the instant case, the employees had voluntarily resigned from Union membership, and requested financial core status, before the Union decided to suspend them for having crossed the picket line. Since the employees voluntarily resigned their membership, the Section 8(a)(3) proviso, which prohibits an employer from discriminating against employees for denial of membership for reasons other than failure to pay dues, was not implicated. Accordingly, although the Union unlawfully imposed penalties on those employees for crossing the picket line and returning to work, it did not violate Section 8(b)(1)(A) by continuing to accept their financial core dues and fees after they voluntarily resigned from the Union.

IV. [FOIA Exemption 5]

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[FOIA Exemption 5

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30 [FOIA Exemption 5

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31 [FOIA Exemption 5

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[FOIA Exemption 5, cont'd.

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[FOIA Exemption 5

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³² [FOIA Exemption 5

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³³ [FOIA Exemption 5

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[FOIA Exemption 5, cont'd. .³⁴

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Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by misrepresenting to members that it was their choice whether to cross the picket line and then fining and suspending members who crossed the picket line, as well as by penalizing members for crossing the picket line when it had not provided them with General Motors and Beck notices.
[FOIA Exemption 5

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B.J.K.

³⁴ [FOIA Exemption 5

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³⁵ [FOIA Exemption 5

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