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

DATE: May 13, 2013

TO: Ronald K. Hooks, Regional Director
Region 19

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

SUBJECT: Sheetmetal Workers Local 103 (Central Plumbing and Heating)
Case 19-CB-092947

536-2581-3307-5000
536-2581-3307-5010

The Region submitted this case for advice as to whether the Union unlawfully fined the Charging Party[1] $15,000 for working for a non-signatory employer in violation of an internal Union rule prohibiting members from working for non-signatory employers. We conclude, in agreement with the Region, that the Union unlawfully fined the Charging Party because he resigned from the Union before beginning his employment with the non-signatory employer. Accordingly, as the Union had no legitimate basis for imposing the fine, its conduct violated Section 8(b)(1)(A).

FACTS

The Charging Party was a member of Sheetmetal Workers Local 103 ("Union"), which operates an exclusive hiring hall, for over 30 years. For the past 16 years, he was employed by Metalworks of Montana, which is signatory to the Union's collective-bargaining agreement. In 2012, due to an economic downturn, Metalworks began reducing the Charging Party's hours until, by the end of August, he was only working one to two days a week. As a result, in September he began looking for other employment, including with Central Plumbing and Heating ("Central"), a non-signatory employer. Early that month, Central offered the Charging Party a project manager position, but he was initially reluctant to work for a non-signatory employer. As an incentive to accept the position, Central's owner parked a new company truck in front of the Charging Party's house, gave him the keys, and told him the truck would be assigned to him permanently if he went to work for the company.

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[1] Although the charge in this case was filed by the representative of two individuals, for purposes of simplicity we refer to the individual who is the subject of the Region's request as the "Charging Party."

After several Union members reported seeing a Central truck parked in front of the Charging Party's house, the Union's business manager called and asked him whether he was working for Central. The Charging Party stated that he was considering Central's job offer and had not yet decided to accept it, but the Union's business manager did not believe him.[2] The business manager consequently sent the Charging Party a letter dated September 4, formally accusing him of violating internal Union rules prohibiting members from working for non-signatory employers and engaging in conduct "detrimental to the best interest of the [Union]."

On September 25, the Charging Party resigned his Union membership. He then accepted Central's job offer and began working for Central on October 1. On October 24, the Union formally charged him with violating its constitution by working for a non-signatory employer while he was a Union member and informed him that a trial would be conducted on November 10. At the trial, which the Charging Party chose not to attend, the Union sustained the charges and imposed a $15,000 fine.

The Union's business manager has admitted that the sole reason the Union fined the Charging Party was because he was purportedly working for a non-signatory employer within the trade jurisdiction of the Union while he was a Union member in violation of the Union's constitution. The business manager additionally conceded that if the Charging Party did not actually work for Central until after he resigned his membership, the Union would not have the right to fine him under its constitution.

ACTION

We agree with the Region that the Union violated Section 8(b)(1)(A) of the Act when it fined the Charging Party for working for Central, because the Charging Party resigned from the Union before beginning his employment with Central.

Section 8(b)(1)(A) makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights guaranteed under Section 7. Section 8(b)(1)(A) does not, however, impair the right of a union to prescribe rules and regulations for its members. To the contrary, a union may "enforce any properly adopted rule that reflects a legitimate union interest, impairs no policy Congress has embedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule."[3] As relevant here, the Board

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[2] The Union considered it highly unlikely that Central would permit the Charging Party to use a company truck merely to encourage him to accept a job offer.

[3] *Scofield v. NLRB*, 394 U.S. 423, 430 (1969). See also *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 181 (1967) ("Integral to…federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through

generally finds that a union's rule prohibiting its members from working for a non-signatory employer is lawful since it is purely an internal union matter that reflects a legitimate union interest.[4] Nevertheless, a union cannot discipline an employee for conduct occurring after the member resigns.[5]

Here, the fine was unlawful because it was imposed for the Charging Party's post-resignation conduct. The Charging Party resigned from the Union on September 25 and began his employment with Central on October 1. The Union asserts that the Charging Party worked for Central before he resigned his Union membership, based on the fact that a Central truck was parked in front of his house for several weeks in September. But Central's owner corroborates the Charging Party's statement that he only permitted the Charging Party to use the truck to encourage him to work for Central, and that the Charging Party did not begin working for Central until October. Also, Central's written employment offer to the Charging Party is dated October 1. Thus, although the Union claims that it imposed the fine based on the Charging Party's pre-resignation conduct, that conduct never occurred. The Union was simply wrong on the facts.

Regardless of what the Union believed at the time the fine was imposed, the fine was nevertheless unlawfully coercive. Section 7 expressly grants employees "the right to refrain from any or all" protected concerted activities, which includes the statutory right to resign union membership.[6] That right would be diluted if unions were permitted to discipline former members based on a mistaken belief that "misconduct" occurred before they resigned from membership, since the discipline would inappropriately deter other members from resigning. Consequently, the coercion

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reasonable discipline of members who violate rules and regulations governing membership.").

[4] See *Carpenters Local 720 (UMC of Louisiana, Inc.)*, 287 NLRB 545, 546 (1987); *Electrical Workers IBEW Local 340 (Hulse Electric)*, 273 NLRB 428, 431-433 (1984); *Plumbers Local 119 (Kamtech, Inc.)*, 264 NLRB 688, 694 (1982), enfd. mem. 715 F.2d 578 (11th Cir. 1983).

[5] See *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1336 (1984), approved in *Pattern Makers League v. NLRB*, 478 U.S. 95 (1985) (finding that the union violated Section 8(b)(1)(A) by imposing a fine on a member for returning to work during a strike after he resigned his membership in the Union); *NLRB v. Textile Workers Local 1029, Granite State Joint Board*, 409 U.S. 213, 217 (1972) (union fines of former members for crossing picket lines and working during a strike following lawful resignations violated Section 8(b)(1)(A)).

[6] *Granite State*, 409 U.S. at 217-218.

inherent in both imposing and maintaining the fine against the Charging Party after he resigned was not lessened by the Union's incorrect assumption that he was working for a non-signatory employer while he was still a Union member. It is accordingly appropriate for the Union—not the Charging Party—to bear the burden of that error.[7] This result protects the Charging Party from the Union's unlawful conduct but imposes no real hardship on the Union; it simply requires the Union to rescind a fine that it could not lawfully impose. For these reasons, we conclude that the Union violated Section 8(b)(1)(A) by fining the Charging Party.[8]

FOIA Exemption 5

[redacted][9]

/s/

B.J.K.

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[7] Cf. *Wisconsin River Valley District Council (Skippy Enterprises)*, 211 NLRB 222, 227-28 (1974), 218 NLRB 1063 (1975), enfd. 532 F.2d 47 (7th Cir. 1976) (finding that union violated Section 8(b)(1)(B) by fining supervisor-member for working for non-signatory employer, notwithstanding union's mistaken belief that he worked for the non-signatory solely as a journeyman carpenter; "just and proper" that the "perpetrator should bear the onus of its own error").

[8] It is clear that the fine was not imposed for the Charging Party's mere possession and minimal use of Central's truck prior to resigning from the Union in violation of the rule prohibiting "conduct detrimental to the best interest of the [Union]." As noted above, the Union's business manager has admitted that the sole reason the Union fined the Charging Party was because he was purportedly working for a non-signatory employer within the trade jurisdiction of the Union while he was a Union member in violation of the Union's constitution. Indeed, the business manager conceded that if the Charging Party did not actually work for Central until after he resigned his Union membership, the Union would not have the right to fine him under its constitution. Therefore, such an argument, if advanced, would be without merit.

[9] The Region should not, in any event, allege that the $15,000 fine violated the Act because it was for an unreasonably high amount. It is well settled that the reasonableness of the amount of an internal union fine cannot serve as an independent basis for a Section 8(b)(1)(A) violation. See *NLRB v. Boeing Co.*, 412 U.S. at 72-75.