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UNITED STATES GOVERNMENT
National Labor Relations Board

COPIES PLEASE A.D. 05513

Memorandum

TO : W. Bruce Gillis, Jr., Director
Region 27

DATE OCT 3 1 1985

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

536-2553
536-2554-2500
596-0420-5050

RELEASE

SUBJECT: UFCW Local 7
Case No. 27-CB-2220

This Section 8(b)(1)(A) and 8(b)(2) case was submitted for advice as to: (1) whether the instant change is time-barred under Section 10(b); and (2) if not, whether the Union violated the Act by charging a reinstatement fee to an agency-fees payer upon her return from maternity leave.

FACTS

Employee Johnson has worked for King Soopers, Inc., (the Employer) since 1980. She was a dues paying member of UFCW Local 7 (the Union) until May 1984, at which time she elected to resign from the Union and pay agency fees.

The Union states that, in June and October of 1984 it told Johnson, in written replies to her inquiries, that she could not get a withdrawal card when she went on maternity leave. In October 1984, in what Johnson says was the first communication that she had with the Union regarding her payment of an "initiation fee," 1/ the Union business agent told her that if she did not join the Union she would have to pay an "initiation fee" upon returning to work from maternity leave. The Union states that on December 11, 1984 the Union membership clerk told Johnson that she could not get a withdrawal card and further states that shortly after that date the Union president told Johnson the same thing.

Johnson went on maternity leave on December 14, 1984. In a letter to the Union dated December 28, 1984 Johnson stated that she had been informed, after inquiring of the Union staff, that she would have to pay agency fees while on leave and an "initiation fee" upon returning from leave. After about three weeks on maternity leave, Johnson stopped paying agency fees. While she was on maternity leave, in February 1985, the Union president told her, in what she states was only the second communication she had with the Union regarding

1/ Although Johnson and others involved in this case have referred to this fee as an "initiation fee," it is actually a reinstatement fee under the Union's constitution and bylaws.

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the payment of an "initiation fee," that she would have to pay agency fees while on leave and an "intitiation fee" when she returned to work.

Johnson returned to work on February 25, 1985 and resumed paying agency fees. She was notified by the Union in a letter dated June 8, 1985 that she owed back "union dues" and an "initiation fee." She has paid neither the "initiation fee" nor the back agency fees, but the Union has not sought her discharge under the union-security clause. The instant charge was filed on July 3, 1985.

It is uncontroverted that the Union issues withdrawal cards to Union members who go on maternity leave. Under the Union constitution and bylaws, members who return from a leave of absence with a withdrawal card do not pay an "initiation" or reinstatement fee, but those who return without a withdrawal card do. It also seems that under the Union constitution and bylaws, a member does not have to pay Union dues while on leave with a withdrawal card.

ACTION

We concluded that a Section 8(b)(1)(A) complaint should issue, absent settlement, for the reasons set forth below. 2/

In Postal Service Marina Center, 271 NLRB 397 (1984), the Board dealt with the interpretation and application of Secton 10(b). The Board held that it would focus on the date that unequivocal notice of the alleged unlawful act was communicated to the aggrieved party, rather than on the date that the consequences of the act became effective, in deciding whether the Section 10(b) period had expired. "Where a final adverse employment decision is made and communicated to an employee . . . [he] . . . must [file an unfair labor practice charge] within 6 months of that time rather than wait until the consequences of the act become most painful." Ibid. at 400.

In International Photographers Guild, Local 659 (Paramount Pictures Corp.), 276 NLRB No. 91, slip op. at 4 (September 30, 1985), the Board found that the charge against the union was not time-barred under Postal Service, above. The Board found, instead, that the union's notice to the charging party was conditional, and therefore did not start the Section 10(b) clock because the notice stated that the action that later became the subject of the charge would take place only upon the happening of a certain event, namely, the failure on the part of the charging party to pay his dues and insurance premium by a specified future date. The Board held in Paramount Pictures that because the notice was conditional, it did not provide unequivocal notice of a final adverse employment decision within the meaning of Postal Service.

With respect to the instant case, Paramount Pictures, above, suggests that, even crediting the Union's version of the facts, 3/ the letters and conversations that allegedly occurred before Johnson went on maternity leave

2/ Because the Union has not attempted to enforce the union-security clause against Johnson, that portion of the instant charge alleging a violation of Section 8(b)(2) should be dismissed, absent withdrawal.

3/ Johnson implicitly denies receiving the June and October letters and conversing with the Union's membership clerk on December 11, 1984.

did not start the Section 10(b) clock running, in that the notice Johnson received of the imposition of the fee was made conditional on certain future events taking place, viz., her leaving work, taking maternity leave, and returning to work. Similarly the conversations that took place while Johnson was on maternity leave did not trigger the Section 10(b) clock, in that they were also equivocal because they indicated that the imposition of the fee was conditional upon her returning to work from her leave. Thus, even crediting the Union's account of the facts, the Section 10(b) period did not begin until the actual imposition of the reinstatement fee because the Union's prior communications with Johnson concerning the imposition of such a fee were not viewed as unequivocal notice of a final adverse employment decision within the meaning of Postal Service.

With respect to the merits of the instant case, we conclude that the Union violated Section 8(b)(1)(A) by imposing the reinstatement fee on Johnson when she returned from maternity leave. The imposition by a union of an unlawful assessment is, in and of itself, a violation of Secton 8(b)(1)(A). Machinists Local Lodge 598 (Union Carbide Corp.), 180 NLRB 875 (1970), 186 NLRB 890 (1970), enf. denied 452 F.2d 717 (4th Cir. 1971), on remand 196 NLRB 785 (1972). Under Professional Engineers Local 151 (General Dynamics Corp.), 272 NLRB No. 164 (November 7, 1984), a union violates Section 8(b)(1)(A) where it imposes an initiation fee on former members who have resigned. In that case, two members resigned during a strike. The strike ended when the union and the employer signed a new contract with a union-security clause. The union then imposed an initiation fee on the employees who had resigned, even though it did not impose any fee on employees who had remained members during the strike. The Board found that the imposition of the fee was an unlawful penalty for the exercise of the Section 7 right to resign from the union and meet only financial core obligations.

Hence, had Johnson been a Union member, she would have received a withdrawal card and would not have had to pay a reinstatement fee. Therefore, under General Dynamics, above, the fee penalized her for exercising her Section 7 right to refrain from joining the Union. 4/ Moreover, the Union cannot defend on the ground that her dues delinquency during maternity leave would have privileged it to revoke her withdrawal card, if it had issued her one, and

4/ In General Dynamics, above, slip op. at 4, the Board found that "the only difference between the Charging Parties and other unit members relied on by the Union to justify its assessment of additional initiation fees was their resignations." In the instant case, on the other hand, there were two differences between Johnson and other unit members. First, she had resigned from the Union. Second, she had gone on maternity leave. Neverthless, the instant case is governed by General Dynamics, above, because in both cases a union imposed additional fees on former members and would not have imposed those fees had those members not exercised their Section 7 right to resign from the union.

charge a reinstatement fee upon her return to work. The dues that she failed to pay during her leave apparently would not have been required of a member holding a withdrawal card under the Union's constitution and bylaws. 5/ The Union may not justify charging her a reinstatement fee based on her failure to pay dues or agency fees that were not lawfullly required to be paid. Hence, the Union violated Section 8(b)(1)(A) by unlawfully assessing Johnson a reinstatement fee.

H. J. D.