

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: November 23, 1994

TO: Victoria E. Aguayo, Regional Director, Region 21

FROM: Robert E. Allen, Associate General Counsel, Division of Advice

SUBJECT: Graphic Communications Union Local 404M (Long Beach Press Telegram) Case 21-CB-11777; Graphic Communications Union Local 404M, (Long Beach Press Telegram), Case 21-CB-11777; Graphic Communications Union Local 404M (Long Beach Press Telegram) Case 21-CB-11777

133-2500, 133-2500, 506-6060-6700, 536-5025-6700, 536-5050-3393, 536-5075-0187, 536-5075-5017-7900, 536-5075-5098

This Section 8(b)(1)(A) case was submitted for advice on whether the Union unlawfully disciplined a dissident member who, while attempting to justify proposed amendments to the Union's bylaws, arguably made a factually incorrect accusation against another Union member.

Charging Party Virginia Jimenez had unsuccessfully run for Union President in 1991 against incumbent President Young. Jimenez was planning another run for that office in December 1994. In March 1993, Jimenez was approached by another member, Manny Pena, about problems which Pena believed had arisen because the Union's bylaws were silent concerning members' rights to vote on contracts. In April 1993, Jimenez's meeting proposed three amendments to the Union's bylaws concerning membership rights to vote on contracts, union finances and strikes. The Union's secretary-treasurer later advised Jimenez that the Union's Executive Board had decided to reject the proposed bylaw amendments.

Jimenez and Pena drafted a letter dated May 11, 1993 (the May letter) which discussed Jimenez's proposed bylaw amendments. The May letter was distributed to all current Union officers and members of the Union's Executive Board. On page four of the May letter, Jimenez cited an example of the Union's having agreed to something that employee-members had not been aware of nor voted upon:

Virginia [Jimenez] is aware of a similar situation concerning the bindery at American Offset in 1988 where the attached side-letter agreement (marked "B") was signed by George Barnett....Again, members did not vote on it and were not even aware that it had been signed until it leaked from some-one in management several months later.

Barnett was the past president of the Union; Barnett had supported incumbent president Young in the 1991 election. A copy of the side-letter, dated June 20, 1988 but not actually signed by Barnett, was attached to the May letter.

In August 1993, Barnett filed Union charges against Jimenez accusing her of lying and misrepresenting facts about him. In February 1994, a Union trial board was convened to hear these charges. Jimenez appeared to challenge the partiality of the trial board. (1) The trial board rejected Jimenez's allegations of partiality and Jimenez left the proceedings. The trial board decided that Jimenez was guilty because it found that Barnett had not signed any side-letter of agreement with management without the authorization or approval of the membership. Attached to the trial board decision was an exhibit in the form of a letter dated June 17, 1988 and actually signed by Barnett. The exhibit letter was substantially similar to but not identical to the June 20 1988 side-letter attached to Jimenez's May letter.

Jimenez's punishment was (1) censure, to be published in the Union newspaper; and (2) a fine of \$250, which would be held in abeyance for one year to be rescinded in the absence of additional violations. At a September 1994 Union membership meeting, the membership voted to sustain the trial board's verdict. (2) Jimenez had been given a copy of the June 20, 1988 side-letter by Bea Langford who had been a member of the Union's negotiating committee for the involved employer. According to Langford, employees had not voted on the two issues in the side-letter agreement. Langford had obtained the side-letter from a

manager who had stated that Barnett had signed that letter. The Region has been unable to determine whether Jimenez's May 11 letter accusation, viz., that members had not voted on the contents of Barnett's June 1988 side-letter agreement, was true or false.

We conclude, in agreement with the Region, that further proceedings are warranted in order to place before the Board the issue of whether the Union's internal discipline of Jimenez violated Section 8(b)(1)(A).

Although a union has great latitude in promulgating and enforcing internal union rules, the use of intraunion discipline to prevent employees from engaging in intraunion political activities violates Section 8(b)(1)(A). In *Scotfield v. NLRB*, 394 U.S. 423 (1969), the Supreme Court affirmed a Board decision (3) that a union did not violate Section 8(b)(1)(A) by fining and threatening to expel employees who did not adhere to union-determined production quotas. The Court held that a union is "free to enforce a properly adopted rule which 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." (4)

Thereafter, in *Carpenters Local Union No. 22 (Graziano Construction)*, 195 NLRB 1 (1972), the Board relied on *Scotfield* and *Marine Workers* to find that the union violated Section 8(b)(1)(A) by fining a member because of the manner in which he participated in internal union affairs. (5) The Board said that, in determining the legality of a union fine, it is charged with considering the full panoply of Congressional labor policies, specifically the rights guaranteed employees by the LMRDA to participate fully and freely in the internal affairs of their own union. (6)

In 1976, in *Operating Engineers Local 400 (Hilde Construction)*, 225 NLRB 596, enfd. ___ F. 2d ___, 95 LRRM 3010 (D.C. Cir. 1977), members who were dissatisfied with a union strike vote called other members and also publicized a meeting at which they attempted to discuss the strike. The union fined these members for "disruption... creat[ing] dissension among the members... destroy[ing] the interest and harmony of the Local Union." The Board, Chairman Murphy dissenting, affirmed the ALJ's conclusion that the fines violated Section 8(b)(1)(A) on the grounds that the employees were engaged in the protected activity of questioning the wisdom of their bargaining representative and attempting to engender support to persuade the union to change its bargaining strategy. The ALJ, in so finding, rejected a claim that the LMRDA preempted the Board in this matter. The ALJ relied on LMRDA, 29 U.S.C. Sec. 523(b) which recites, inter alia, that "Nothing contained in this chapter... shall be construed to... impair or otherwise affect the rights of any person under the National Labor Relations Act..." 225 NLRB at 606.

In *Teamsters Local 287 (Airborne Express)*, 307 NLRB 980 (1992), the Board held that the mere maintenance of a provision requiring the payment of fines before dues violated 8(b)(1)(A). Citing *Hilde Construction*, the Board relied on 29 U.S.C. Sec. 523(b) to reject a union contention that the maintenance of the provision was preempted by the LMRDA. The Board has also found that a union violates Section 8(b)(1)(A) when it terminates an employee's membership in retaliation for the employee's internal union activities, specifically including campaigning for union office. In *Machinists District 91 (Pratt & Whitney)*, (7) the Board found a Section 8(b)(1)(A) violation when a union expelled an employee from membership because he, inter alia, engaged in internal union activities.

In *Teamsters Local 579 (Janesville Auto Transport Co.)*, 310 NLRB 975 (1993), union officer Kaiser arranged special health care discounts for union members. Eight members, including charging party Watson and also Wilson, who was Kaiser's political rival in a pending election, signed a letter objecting to Kaiser's arrangement. Kaiser responded by (1) attacking Watson as "anti-union"; (2) publishing Watson's letter to demean Watson's and Wilson's union politics; and (3) announcing at a union meeting that the eight letter signatories would be denied extra union benefits. Citing *Scotfield* and *Graziano*, the Board found a Section 8(b)(1)(A) violation because the union's denial of benefits impaired policies imbedded in the labor laws, viz. "the right guaranteed by the Labor-Management Reporting and Disclosure Act of 1959 to participate fully and freely in internal union affairs...also...the right guaranteed by Section 7 of the Act to concertedly oppose the decisions made by the incumbent leadership of the Union." Id. (8)

We conclude that the Union in the instant case violated Section 8(b)(1)(A) for essentially the same reasons expressed in *Janesville*. Jimenez, together with Pena, was attempting to change the bylaws of her Union. Jimenez was being opposed by Young and Barnett, her political rivals from a prior Union election and potential rivals for an imminent Union election. The distinction between this case and *Janesville*, et al., is that here, Jimenez's political rivals seized upon an apparent factual error

in Jimenez's May 11 letter to attempt to censure her and impose a fine. Even assuming that the Union trial board's findings were correct, and that Jimenez's May 11 letter was incorrect, the Union's retribution nevertheless "offended policies imbedded in the labor laws" because any factual error did not remove Jimenez's conduct from the protection of either the LMRDA or the NLRA.

Regarding the LMRDA, in *Machinists, Fulton Lodge No. 2 v. Nix*, 415 F.2d 212, 71 LRRM 3124, 3128 (5th Cir 1969) a union member was expelled for circulating false and/or malicious statements attacking the character and integrity of a political rival. The court found a violation of the LMRDA Bill of Rights' protection of free speech: "a union may not subject to retributive disciplinary action a member accused of libeling or slandering a union officer." See also *Boilermakers v. Rafferty*, 348 F.2d 37 (9th Cir 1965) involving the unlawful expulsion of members proposing bylaw revisions, where the circuit court agreed with the district court below: "Assuming the statements of the plaintiff in the circular were false, as found by the Union, their dissemination to Union members would not justify expulsion as a matter of law..."

Regarding the NLRA, in *Texaco, Inc. v. NLRB*, 462 F.2d 812 (3d Cir 1972), the court upheld a Board ruling to the effect that misstatements made in the course of union activity do not lose the protection of the Act unless they are "deliberately or maliciously false." See also *Jacobs Transfer, Inc.*, 201 NLRB 210, 218 (1973) where the Board adopted an ALJD stating:

A union member seeking to exercise his right to criticize the union administration and to supplant it does not speak at his peril. He is permitted reasonable latitude, even for error, though that error may be hurtful to others, if his utterances are in good faith, on colorable ground, and not deliberately or maliciously false.

In this case, Jimenez made the assertions in the May 11 letter for the purpose of criticizing and remedying what she and another member considered to be serious flaws in their Union. The assertions were made in good faith and were not deliberately or maliciously false. The Union retributive conduct therefore violated Section 8(b)(1)(A).

R.E.A.

¹ President Young was acting as advocate for Barnett. Jimenez contended, inter alia, that all but one trial board member had either supported or run on the same slate as President Young in the 1991 Union election.

² Jimenez appealed that decision to the International Union which recently sustained the verdict. Jimenez has filed a charge against the International because of this action; that charge is pending investigation.

³ *Local 283, UAW (Wisconsin Motor Corporation)*, 145 NLRB 1097 (1964).

⁴ The Court in *Seofield*, at 430, contrasted that union rule with the rule found unlawful in *NLRB v. Marine Workers*, 391 U.S. 418 (1968), because the latter rule required members to exhaust internal union remedies prior to filing Board charges, and thus interfered with access to the Board.

⁵ The member there actively opposed the incumbent union officials in the election of union delegates to the international convention.

⁶ See also *Stran Steel Corp.*, 239 NLRB 374, 380 (1978), which cited *Graziano* for the proposition that Section 8(b)(1)(A) protects members "from internal Union discipline" against the exercise of LMRDA rights.

⁷ 278 NLRB 39 (1986), *enfd. per curiam* 817 F. 2d 235, 125 LRRM 2335 (2d Cir. 1987). See also *Teamsters Local 287 (Emery Air Freight/Airborne Express)*, 304 NLRB 119 (1991).

⁸ See also *Operating Engineers Local 139 (AGC of Wisconsin)*, 273 NLRB 992 (1984) (member's publication of dissident newsletter was within his "Section 7 right to question the wisdom of his representatives or to take steps to align his union with his own position."