

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

DATE: April 12, 2016

TO: David E. Leach, Regional Director  
Region 22

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

SUBJECT: CWA Local 1101 (AT&T Mobility)  
Case 22-CB-158971

506-4033-9200  
506-6090-0700  
536-2518-9000  
536-2581-6767-7500  
536-5075-5025  
536-5075-5067-5900  
536-5075-5083-2500

The Region submitted this case for advice as to whether CWA Local 1101 (the Union) violated Section 8(b)(1)(A) by refusing to certify the charging party's election as shop steward pending investigation of internal Union charges filed against [REDACTED] (b) (6), (b) (7)(C). We conclude that the Union did not violate the Act and the charge should be dismissed, absent withdrawal.

**FACTS**

This case involves a [REDACTED] (b) (6), (b) (7)(C) (the charging party), and [REDACTED] (b) (6), (b) (7)(C) internecine political struggles within the Union since at least 2013. In that year, [REDACTED] (b) (6), (b) (7)(C) Union officers filed charges against the charging party [REDACTED] (b) (6), (b) (7)(C). [REDACTED] (b) (6), (b) (7)(C). The charging party was initially convicted on those charges and suspended from service by the Local, but the International ultimately dismissed those charges on appeal and in March 2014 ordered the charging party's reinstatement with backpay.

Shortly thereafter, the charging party [REDACTED] (b) (6), (b) (7)(C) [REDACTED] (b) (6), (b) (7)(C) working at AT&T Mobility's National Business Services Call Center in Paramus, N.J. In July of 2015, a former shop steward told the charging party about the Employer's recent restriction on employees seeking to adjust their work schedule under a contractual "Exchange Time" provision, a restriction that adversely affected the charging party, among others. This former steward had been unsuccessfully trying to get the Chief Shop Steward to file a grievance over this change. On about July 30, the charging party asked the Chief Shop Steward what the Union was doing about the grievance. The Chief Shop Steward said the Union was

looking into the matter. The charging party continued to push the matter, suggesting that the Union's inaction was in direct retaliation against (b) (6), (b) (7)(C) and others who opposed the Executive Board. The charging party also unsuccessfully tried, on multiple occasions, to directly file a grievance with the Employer. The Union eventually filed a grievance over the matter on August 27. The charging party continued to inquire about the issue. Specifically, on September 30, during the union's election for steward, for which the charging party was a candidate, (b) (6), (b) (7)(C) repeatedly asked the Union Business Agent and the Chief Shop Steward about it.

At issue here is an internal Union complaint against the charging party filed by the Chief Shop Steward, who was also one of the Union officers who had filed the 2013 internal Union charge against (b) (6), (b) (7)(C). The new internal Union complaint alleges that on September 30, the charging party acted in a bullying, demeaning, and threatening manner towards the complainant in the course of inquiring about the pending grievance. Although the charging party won the steward election, the Union's Executive Board refused to certify (b) (6), (b) (7)(C) as steward until it investigated and processed the internal Union charge. The matter has been scheduled for trial. The charging party alleges that the Union's failure to certify (b) (6), (b) (7)(C) election impaired policies embodied in the Act in violation of Section 8(b)(1)(A), under the test articulated in *Office Employees Local 251 (Sandia National Laboratories)*.<sup>1</sup>

### ACTION

We conclude that the Union did not violate the Act by refusing to certify the charging party as steward because the Union's action did not fall within the scope of Section 8(b)(1)(A).

The Board is not charged with regulating the relationship between unions and their members and thus will not find a violation of Section 8(b)(1)(A) unless there is "some nexus with the employer-employee relationship and a violation of the rights and obligations of employees under the Act."<sup>2</sup> Thus, a union's discipline of a member

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<sup>1</sup> 331 NLRB 1417 (2000).

<sup>2</sup> *Id.* at 1424 (overruling previous decisions to the contrary). *See Scofield v. NLRB*, 394 U.S. 423, 430 (1969) ("[Section] 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule"); *Teamsters Local 896 (Anheuser-Busch)*, 339 NLRB 769, 769 (2003) (noting it is well established that nothing in the Act precludes a union from instituting its own rules for maintaining intra-union discipline and maintaining union solidarity so long as those rules do not impair any

is within the scope of Section 8(b)(1)(A) only if it: (1) impacts union members' relationships with their employer; (2) impairs access to the Board's processes; (3) pertains to unacceptable methods of union coercion such as violence; or (4) otherwise impairs policies embedded in the Act.<sup>3</sup> If the union's actions fall into one of the above four categories, the Board will then balance the affected employee's Section 7 rights against the legitimacy of the union interests at stake.<sup>4</sup>

Here, the Union's refusal to certify the Charging Party as steward until completing its investigation of an internal Union complaint against (b) (6), (b) (7)(C) is not within the scope of Section 8(b)(1)(A). First, although the charging party asserts the Union's action impacted (b) (6), (b) (7)(C) terms and conditions of employment, we conclude that it did not because the steward position is created by the Union and its bylaws, rather than any type of agreement with the Employer.<sup>5</sup> Moreover, the applicable collective-bargaining agreement does not afford stewards super-seniority or any other additional benefits that are now lost to the charging party. Second, there is no evidence, indeed no contention, that the Union by its action has impeded any employee's access to Board processes. Third, there is also no evidence that the Union has engaged in any violence or other unacceptable methods of coercion.

Finally, the Union's failure to certify the election in the context of the internal Union charge does not impair policies embedded in the Act. While the Union official who filed the internal union charge has a contentious history with the charging party

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policy that Congress has imbedded in the Act and are reasonably enforced against union members who are free to resign from the Union and escape the rules).

<sup>3</sup> *Service Employees Local 254 (Brandeis University)*, 332 NLRB 1118, 1120 (2000) (analyzing union's application of its internal rules under *Sandia*); *Sandia Natl. Laboratories*, 331 NLRB at 1424.

<sup>4</sup> *See Steelworkers Local 9292 (Allied Signal Technical Services)*, 336 NLRB 52, 54 (2001) (highlighting that use of balancing test is "in accord with longstanding [Board] precedent").

<sup>5</sup> *Cf. Brandeis University*, 332 NLRB at 1121 (where charging party was removed from his positions as steward and a member of the labor-management committee, the Board noted that while the steward position was solely a union-created position, the committee position was created by the collective-bargaining agreement and as such could arguably be considered a term and condition of employment that was adversely affected). *See also National Union of Healthcare Workers (Mercy Health Partners, Hackley Campus)*, Cases 07-CB-115117, et al., Advice Memorandum dated June 12, 2014 at 9-10 (finding that removal of stewards did not impact their relationship with their employer).

and may well bear personal animus towards (b) (6), (b) (7)(C) to the extent animus exists, it is based on internal Union politics and not properly cognizable under Section 8(b)(1)(A). Moreover, there is no evidence that the Union's Executive Board, which refused to certify the charging party's election as steward but instead assigned a prosecutor to investigate and try the internal charge, bears any animosity towards the charging party, either directed against (b) (6), (b) (7)(C) personally or against (b) (6), (b) (7)(C) exercise of Section 7 rights.<sup>6</sup>

Further, even assuming that the Union's failure to certify the charging party's election impairs policies embedded in the Act, and it therefore is appropriate to balance (b) (6), (b) (7) Section 7 rights against the Union's interests here, we would still find no violation. Thus, the charging party's right to "assist a labor organization" and (b) (6), (b) (7) co-workers' rights "to bargain collectively through representatives of their own choosing" are overridden by "the Union's legitimate interests in speaking with one voice, through trusted representatives, in dealing with the Employer about the bargaining unit employee's terms and conditions of employment."<sup>7</sup> More specifically, the Board has found that union discipline of a member for challenging grievance handling does not violate Section 8(b)(1)(A) because the union's "legitimate and substantial interest in maintaining control over the grievance process" outweighs the disciplined member's arguably impacted Section 7 right to question the adequacy of his union's grievance handling.<sup>8</sup> Therefore, the Union did not violate Section 8(b)(1)(A) by failing to certify the charging party's election as shop steward.

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<sup>6</sup> While the record is not clear as to whether the Union followed past practice in failing to certify the election prior to ascertaining the charging party's guilt at a trial, there is no evidence that this procedure was followed in retaliation for any protected activity. Indeed, based on a charge of bullying, demeaning and threatening conduct, not certifying the election does seem like a prudent course. *See also National Union of Health Care Workers (Mercy Health Care Partners, Hackley Campus) Cases 07-CB-115117, et al.* Advice Memorandum dated June 12, 2014, at 9-10 (concluding that union did not violate Section 8(b)(1)(A) by failing to follow bylaws and constitution when it removed stewards and bargaining committee representatives, where union's interests in representing whole unit outweighed employees' right to be represented by bargaining representatives of their own choosing.)

<sup>7</sup> *Brandeis University*, 332 NLRB at 1122-23 (finding that even if charging party was removed from elected steward position, and his removal therefore implicated the Section 7 right of his fellow employees to bargain through representatives of their own choosing, that right did not outweigh the union's legitimate interest in ensuring undivided loyalty of those who represent it).

<sup>8</sup> *See Steelworkers Local 9292 (Allied Signal Technical Services)*, 336 NLRB at 54-55 (finding no Section 8(b)(1)(A) violation where charging party was suspended from union membership for filing internal union charges challenging president's grievance

Accordingly, for the foregoing reasons, the charge should be dismissed, absent withdrawal.

/s/  
B.J.K.

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handling, noting that charging party could continue to file grievances and pursue legal claims against the union for mishandling grievances).