

during the strike did not resign their membership until after they were charged or fined by the Union, or never resigned their Union membership at all.

In mid-September, the Union filed internal Union charges against four current Union members for failing to honor the strike.³ Internal Union trials were held for these four members in November, and fines were levied against all four. The Union, however, decided to hold in abeyance the fines of two of the members after they stated during their trials that the Employer had misled them into believing that the Union could not take any action against them if they crossed the picket line, and that they wanted to know what they could do to “make things right” with the Union. In light of these statements, the Union held their fines in abeyance pending their taking Union education training and providing 100 hours of membership services. If the two successfully completed their education and membership services, the fines would then be revoked. The other two Union members were fined without any opportunity to have the fines revoked.

In mid-December, the Union filed internal Union charges against an additional 42 employees, three of whom were still Union members,⁴ for failing to honor the strike. Internal Union trials were held for the 42 in January 2016; most of the former members did not appear at their trials or otherwise contest the charges. The Union fined all 42 employees, although the Union again decided to hold the fine of one of the current Union members in abeyance pending (b) (6), (b) (7) taking Union education training and providing 100 hours of membership services.

In addition to the 46 employees discussed above that the Union charged and fined, the Region’s investigation has adduced evidence of eight other employees who crossed the picket line and worked for the Employer but were not charged or fined by the Union. Seven of the eight never resigned from the Union; the other resigned (b) (6), (b) (7) membership during the first week of the strike. The Union asserts that it has not charged or fined these employees because: (1) it was not aware that some of the employees ever worked behind the picket line; (2) some of the employees had already ceased working for the Employer before the Union filed any internal Union charges; and (3) the Union is still deciding whether to charge two of the employees, one of whom resigned (b) (6), (b) (7) membership during the first week of the strike, and the other of

³ It is not clear on what basis the Union selected the four employees who were charged in the first set of Union trials. One of the four members in the first set of Union trials subsequently resigned (b) (6), (b) (7) Union membership in February 2016, long after the Union levied its fine against (b) (6), (b) (7)

⁴ One of these three members resigned (b) (6), (b) (7) Union membership after (b) (6), (b) (7) was charged by the Union (but before (b) (6), (b) (7) Union trial), and another one resigned (b) (6), (b) (7) Union membership after (b) (6), (b) (7) was fined by the Union.

whom is still a Union member. The Union says that it identified the employees who were charged for crossing the picket line primarily based on eyewitness reports from the Union's business agent for this unit, as well as those of other Union members who were on the picket line. It does not appear that the Union did a comprehensive review of employment records to determine who had worked for the Employer during the strike.

None of the former members have paid the fines levied against them. The Union has not sought to enforce any of the fines by instituting court proceedings.

The National Right to Work Legal Defense Foundation filed individual charges against the Union on behalf of 39 of the fined former Union members. The charges allege, *inter alia*, that the Union violated Section 8(b)(1)(A) of the Act by fining the former members, because the Union thereby discriminated against employees who exercised their Section 7 right to resign their Union membership.

ACTION

We conclude that no unlawful discrimination has been shown in the instant cases.

The legal rubric for evaluating when a union may lawfully fine employees who cross a picket line and go to work is well established. In *NLRB v. Allis-Chalmers Mfg. Co.*,⁵ the Supreme Court held that a union does not violate the Act by fining union members who go to work during a lawful strike, or by suing to collect the fines. The Court emphasized that:

Integral to . . . federal labor policy has been the power in the chosen union to protect against erosion of its status . . . through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '(t)he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . .'⁶

The court further noted the legislative history of Section 8(b)(1)(A) and, "the repeated refrain throughout the debates on [Section] 8(b)(1)(A) and other sections that

⁵ 388 U.S. 175, 178-95 (1967).

⁶ *Id.* at 181 (citations omitted).

Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status."⁷

Moreover, while the right to refrain from engaging in concerted activities generally encompasses the right to refrain from participation in a strike, a member of a union waives the right to refrain from striking to the extent that the union properly enacts a rule prohibiting its members from crossing its lawful picket line. Such a rule, when imposed on employees who enjoy full membership rights, constitutes legitimate internal regulation of the conduct of the union's own members.⁸ Thus, as a general rule, "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."⁹ While an employee voluntarily remains a member of a union, the Board has specifically acknowledged that Section 8(b)(1)(A) does not "reach the purely internal enforcement of union rules having no impact on the employment relationship," and not relating to the union's role as collective bargaining representative.¹⁰ The provisions of 8(b)(1)(A) "were not intended by Congress to apply to the imposition by the union of fines not affecting the employer-employee relationship and not otherwise prohibited by the Act."¹¹

⁷ *Id.* at 194-95.

⁸ See, e.g., *Teamsters Local 439 (Loomis Courier)*, 237 NLRB 220, 222 (1978) (citing *Allis-Chalmers*, 388 U.S. at 195-96; *NLRB v. Granite State Joint Board, Textile Workers Union of America, Local 1029*, 409 U.S. 213, 215 (1972)).

⁹ *Scofield v. NLRB*, 394 U.S. 423, 430 (1969).

¹⁰ *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1422, 1424-25 (2000).

¹¹ *NLRB v. Boeing Co.*, 412 U.S. 67, 73 (1973). See also, e.g., *Electrical Workers Local 2321 (Verizon)*, 350 NLRB 258, 262 (2007). The decision in *Verizon*, in which the Board found that a union's disparate treatment of an employee violated Section 8(b)(1)(A), emphasized the distinction between union sanctions that affect employees' employment relationship and union fines, which do not. "Section 8(b)(1)(A) was not enacted to regulate the relationship between unions and their members unless there was some nexus with the employer-employee relationship and a violation of the rights and obligations of employees under the Act. . . . It is clear that . . . the [u]nion could have fined [the employee]." *Id.* (internal citations and quotation marks omitted). Here, in contrast to *Verizon*, we are presented with *only* Union fines, which have no nexus to the affected employees' employment relationship.

When a union member lawfully resigns from the union, however, “its power over him ends.”¹² Thus, “[w]here a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street,” and any subsequent union attempts to impose internal discipline on the former member are unlawful.¹³ Nonetheless, even after resignation, a union may enforce its legitimate rules against former members for conduct they engaged in while they were still members of the union.¹⁴

In the instant cases, we conclude that the Union lawfully enforced its internal rules, as the evidence does not support a finding of unlawful discrimination against employees who resigned from the Union.¹⁵ Thus, both former members and current members were charged and fined by the Union for working during the strike. Indeed, all four of the first group of employees charged and tried were current Union

¹² *Granite State Joint Board*, 409 U.S. at 215.

¹³ *Id.* at 217. *Accord: Booster Lodge No. 405, IAM v. NLRB*, 412 U.S. 84 (1973).

¹⁴ *See, e.g., Booster Lodge No. 405, IAM*, 185 NLRB 380, 383 (1970) (“As the source of the [u]nion’s disciplinary authority lies in the contractual relationship between the organization and its members, . . . the termination of some employees’ membership here did not affect the [u]nion’s subsequent assertion of rights which had accrued to the [u]nion during their earlier period of membership, such as the right to discipline the employees for prior strikebreaking. The effect of these employees’ resignations was only to extinguish the [u]nion’s future authority over them.”), *enforced in pertinent part*, 459 F.2d 1143 (D.C. Cir. 1972), *aff’d in pertinent part*, 412 U.S. 84 (1973).

¹⁵ Counsel for the Charging Parties argues that the Union violated its duty of fair representation by levying the fines, despite the complete lack of any nexus between the fines and the affected employees’ employment relationship, as well as the longstanding recognition that the relationship between a member and his or her union, including internal union fines, has instead been viewed as generally contractual in nature and governed by the law of contracts or voluntary associations. *See, e.g., Boeing*, 412 U.S. at 75-76; *Granite State Joint Board*, 409 U.S. at 216; *Allis-Chalmers*, 388 U.S. at 191-93. In any case, we would find no unlawful discrimination here under either standard of analysis.

members when they were charged and tried, and three of the next group were current members when they were charged (two of them remained current members when they were fined). Moreover, while most of the eight employees who have not been charged by the Union never resigned their membership, at least one of them resigned membership during the first week of the strike, and the Union has offered reasonable explanations as to why it has not charged the others. In light of these circumstances, including the Union's charges and fines of both former and current members and its failure to charge at least one former member, we find no basis on which to reject the Union's assertions as to why it has not charged these eight employees. The Union credibly contends that it identified the employees who were charged and fined based primarily on eyewitness reports, and it does not appear that the Union did a comprehensive review of employment records to determine who had worked for the Employer during the strike (which it was not required to do). The Union's conduct, on its face, was a reasonable exercise of its disciplinary discretion, and we find no basis for concluding that the Union's explanations are a pretext for unlawful discrimination. Therefore, since we find no discrimination in the Union's charging or fining of employees who crossed the picket line and worked for the Employer, we conclude that the Union did not retaliate against its former members, or unlawfully coerce others who might seek to resign from the Union.

Finally, we would not find a violation based upon the Union's holding in abeyance, and potentially revoking, the fines levied on three current Union members, conditioned on the members' successfully completing Union education training and providing 100 hours of membership services. The conditions imposed on these members are entirely consistent with the legitimate purpose of the fines themselves, i.e., to compel Union solidarity and respect for the Union's strike and picket line among union members, and the conditional opportunity for fine revocation is well within the Union's lawful discretion in its internal regulation of the conduct of its own members.¹⁶ The fact that such an opportunity for penance or expiation of the fines is necessarily available only to current Union members does not make it unlawfully discriminatory, particularly as it is undisputed that the fines were levied against the three members on the same basis as the fines of the former members who were

¹⁶ See, e.g., *Local 1900, International Brotherhood of Electrical Workers (Potomac Electric Power Co.)*, Case 5-CB-5316, et al., Advice Memorandum dated April 21, 1987, at 3 (union did not act unlawfully when it levied fines of \$500.00 on employees who crossed a picket line to work for their employer and then resigned their union membership, but levied fines of only \$250.00 on two employees who crossed the picket line to work for the employer for a period of time but did not resign their membership, where the union plausibly explained its conduct as being because the two employees who retained their union membership "repented their sins' by honoring the line thereafter").

charged with crossing the Union's picket line, as well as the fines of the other current members who were fined, and that other Union members were not offered the same opportunity for the conditional revocation of their fines. Given all these factors, we conclude that the Union did not unlawfully discriminate against the former members based upon their resignation from Union membership.

Accordingly, the Region should dismiss the instant charge allegations, absent withdrawal.

/s/
B.J.K.

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