

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

REVISED

DATE: September 8, 2016

TO: Joseph F. Frankl, Regional Director
Region 20

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

SUBJECT: Plumbers Local 228 (Various Employers) 536-0150-7500
Case 20-CB-169784 536-2545-1500
536-2545-5000
536-2545-9900
536-5025-0100
536-5025-8350

This case was submitted for advice as to whether the Charged Party local union, or the international union with which it is affiliated,¹ violated Section 8(b)(1)(A) of the Act by refusing to give a retiree-member a travel card permitting (b) (6), (b) (7) to work within another local union's jurisdiction. We conclude that, given the prohibition in the international union's constitution against travelers working without a travel card, the Charged Party local union and the international union violated the Act by denying a travel card to the Charging Party, thereby discriminating against (b) (6), (b) (7) on the basis of local union membership.

FACTS

The Charging Party in the instant case has worked in the plumbing trade for approximately (b) (6), (b) (7)(C) years as a member of local unions affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States, Canada, and Australia (the UA). (b) (6), (b) (7) has been a member in good standing of Plumbers Local 228 since (b) (6), (b) (7)(C) and continues as such currently.

The Charging Party retired in (b) (6), (b) (7)(C) 2015 and began drawing (b) (6), (b) (7) pension benefit at that time. However, consistent with provisions in the applicable union pension plan allowing retirees to continue working under certain circumstances while

¹ Although no charge against the international union was pending when this case was submitted by the Region, a timely charge (Case 20-CB-182719) was filed on August 24, 2016.

also drawing a pension,² the Charging Party has always planned to continue working as a union member after retirement. In particular, the Charging Party planned to work on a particular construction job outside Reno, Nevada, a jurisdiction in which [REDACTED] understood that retirees were working as travelers. Indeed, the Charging Party even took a particular class necessary to qualify for that job.

The UA Constitution provides for the issuance of travel cards to allow members of one local union to work outside the geographical jurisdiction of that local under the auspices of a different local. In particular, it provides that travel cards shall be issued by the business manager of a member's home local to any journeyman who desires to work outside of that local's jurisdiction. Such travel cards are furnished to the local unions by the UA, and any dispute regarding the issuance or acceptance of the travel card is to be determined by the President of the UA. The UA Constitution further provides that any local union or union official who permits a member of another UA local to work without a travel card "shall be disciplined."

In [REDACTED] 2015, the Charging Party went to the Local 228 union hall to obtain [REDACTED] travel card so [REDACTED] could apply for the Reno construction job. [REDACTED] spoke to Local 228's recording secretary, who informed the Charging Party that [REDACTED] travel card was not present at the hall. When the Charging Party complained about this, the recording secretary told [REDACTED], "Because you are a retiree, you cannot work at all." Thereafter, in [REDACTED] 2015, the Charging Party spoke with Local 228's business manager, who also told [REDACTED] that retirees are not allowed to work. The business manager stated that, as far as [REDACTED] knew, the Charging Party was the first Local 228 retiree who wanted to work and that [REDACTED] did not know what to do about it. The business manager referred the Charging Party to the district council and the UA. In lieu of [REDACTED] permanent travel card, the Charging Party also asked Local 228's business manager for a temporary travel card, called a "white letter," which would enable the Charging Party to work as a traveler while awaiting the issuance of [REDACTED] permanent travel card. Local 228's business manager refused to give the Charging Party a temporary travel card as well.

In [REDACTED] 2015, the Charging Party wrote to the UA requesting a travel card. [REDACTED] received no response to [REDACTED] request. In [REDACTED] 2016, [REDACTED] again wrote to the UA requesting a travel card. Finally, in [REDACTED] 2016, the Charging Party received a letter from the UA stating: "Your UA membership record states that you went on retired status Accordingly, we will be unable to accommodate your request." Since that time, Local 228 and the UA have continued to refuse to provide the

² The applicable pension plan allows retirees to work in jurisdictions where the local union business manager certifies that there is a shortage of available employees with the retiree's skills.

Charging Party with (b) (6), (b) permanent travel card, to give (b) (6), (b) (7)(C) a new travel card, or to issue (b) (6), (b) (7)(C) a temporary travel card that would allow (b) (6), (b) (7)(C) to work under the UA Constitution. According to counsel for the UA, the current UA General President has adopted a policy that denies travel cards to retirees in order to promote job opportunities for UA members who are not receiving retirement benefits.

ACTION

We conclude that, given the prohibition in the UA's constitution against travelers working without a travel card, Plumbers Local 228 and the UA violated the Act by denying a travel card to the Charging Party, thereby discriminating against (b) (6), (b) (7)(C) on the basis of local union membership.

It is well established that a union violates the Act by denying referral from a hiring hall, or otherwise attempting to cause an employer to refuse to hire an employee, on the basis of local union membership or non-membership.³ Thus, for example, in *Carpenters Local 40 (Stop & Shop, Inc.)*,⁴ the Board found that a local union—which did not operate an exclusive hiring hall—violated the Act by refusing to issue work permits to travelers and attempting to cause an employer to refuse to hire the employees because they didn't have work permits. The Board found that, in light of a prohibition in the international union's constitution against a member of one local going to work in the jurisdiction of another local without a work permit, the respondent union's failure to issue the work permits and statements to the employer objecting to the hire of the employees violated the Act.⁵ Significantly, the Board

³ *International Brotherhood of Electrical Workers, Local 357 (Newtron Heat Trace, Inc.)*, 343 NLRB 1486, 1498 (2004) (citing *Electrical Workers Local 3 (White Plains)*, 331 NLRB 1498 (2000)); *Sachs Electric Co.*, 248 NLRB 669, 670 (1980) (union violated Section 8(b)(1)(A) and (2) by, *inter alia*, discriminatorily refusing to allow members of other locals to sign highest priority referral list), *enforced in pertinent part sub nom. NLRB v. Electrical Workers Local 453*, 668 F.2d 991 (8th Cir. 1982); *Reinforcing Iron Workers, Local 426 (Great Lakes Contracting of Detroit, Inc.)*, 180 NLRB 856, 859 (1970) (union violated Section 8(b)(1)(A) and (2) by, *inter alia*, attempting to cause employees in other trades to cease work because two individuals were not members of the union and had no work permits, which the union had refused to give them, and by causing the employer to discharge the two employees); *Lake County, Indiana, Carpenters (Tonn & Blank, Inc.)*, 182 NLRB 233, 240 (same), *enforced per curiam*, 1972 WL 3038 (7th Cir. 1972) (unpublished).

⁴ 143 NLRB 142 (1963).

⁵ *Id.* at 143.

found a violation in *Stop & Shop* notwithstanding that the Board also found that the union there did not actually *cause* the employer to discriminate against the employees, because the employees themselves were aware of the union's constitution's prohibition, and "had every intention of adhering to that constitutional requirement. The decisive causative factor . . . is that neither [of the employees] would accept employment unless Respondent local first granted them work permits."⁶

Similarly, here, given the prohibition in the UA's constitution against travelers working without a travel card, the denial of a travel card to the Charging Party makes it impossible for [REDACTED] to seek work as a traveler.⁷ Indeed, even if the Charging Party wished to disregard the UA's constitution by obtaining work in another local's jurisdiction without a travel card, [REDACTED] could not do so, as the UA's constitution's prohibition expressly mandates that any local union or union official who permits a member of another UA local to work without a travel card themselves "shall be disciplined." In contrast, there is no similar prohibition against retirees seeking work through the home local in which they already have membership. By definition, travel cards are only required for work by members of *other* locals. Therefore, on its face, the denial of a travel card by Local 228 and the UA draws a bright line between retiree-members seeking work, based solely on their local union membership. If they seek work through the local of which they are a member, they may work; if they seek work with any other local, they may not.⁸ Such discrimination based solely on local

⁶ *Id.* Significantly, we are aware of no case in which the Board has found that a union may lawfully discriminate based on local union membership because an individual discriminatee could resign from union membership altogether, if they so choose, and thereafter apply for non-discriminatory referral as a non-member. In the absence of direction from the Board to do so, we would not administratively impose such a requirement on the Charging Party here.

⁷ We note that the Charging Party is clearly a statutory employee under the Act, covered by the protections afforded by Section 8(b)(1)(A). *See, e.g., Steelworkers Local 2869 (Kaiser Steel Corp.)*, 239 NLRB 982, 988 (1978) ("individuals who have retired from an employer's employment but who still remain active members of the nation's workforce . . . would still be considered statutory employees with a sufficient nexus to the unit to be owed a duty of fair representation by the Union") (citing *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.*, 404 U.S. 157, 168 (1971) (distinguishing statutory employees, including "applicants for employment and registrants at hiring halls," who are thus members of the "active work force available for hire," from retirees who have "ceased work without expectation of further employment")).

⁸ Given the patent discrimination here based solely on the Charging Party's local union membership, we need not decide whether a general prohibition against the

union membership is unlawful under the Act, and Local 228 and the UA violated Section 8(b)(1)(A) by their conduct.

We recognize that the UA argues that the unions' travel card policy is an entirely internal union matter that does not violate the Act. As the Board has noted, however, this argument misconstrues the meaning of Section 8(b)(1)(A): "Although the proviso permits a union to prescribe rules with respect to acquisition and retention of membership, a union's ability to enforce such rules in such a way that it affects a member's employment status is restricted."⁹ Given the prohibition in the UA's constitution against union members working as travelers without a travel card, the decision of Local 228 and the UA to deny the Charging Party a travel card patently affects (b) (6), (b) (7) employment status.

Accordingly, in these circumstances, the Region should issue complaint, absent settlement, alleging that Local 228 and the UA violated Section 8(b)(1)(A) of the Act by denying a travel card to the Charging Party, thereby discriminating against (b) (6), (b) (7) on the basis of (b) (6), (b) (7) local union membership.

/s/

B.J.K.

ADV.20-CB-169784.Response.PlumbersLocal228-2. (b) (6), (b) (7)

referral of *all* retirees would violate the Act. In this regard, we note that, while it might be argued that such a blanket ban on referring retirees violates the Age Discrimination in Employment Act (ADEA), and thus might violate the Act as well, at least one court has held that retirement status was a "reasonable factor other than age" permitting disparate treatment of retirees under the ADEA. *Rollins v. Clear Creek Indep. Sch. Dist.*, 2006 WL 3302538, at *5 (S.D. Tex. 2006) (unpublished). In any case, should evidence be adduced indicating that *all* retirees are prohibited from referral, even by their home local unions, the Region should contact the Division of Advice.

⁹ *Iron Workers Local 111 (Steel Builders)*, 274 NLRB 742, 745 (1985) (citing *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967) ("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"), *enforced in pertinent part*, 792 F.2d 241 (D.C. Cir. 1986), *supplemented as to remedy*, 298 NLRB 930 (1990), *enforced*, 946 F.2d 1264 (7th Cir. 1991).