

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

Advice Memorandum

DATE: June 8, 2017

TO: Kathleen M. McKinney, Regional Director
Region 15

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

SUBJECT: Laborers' International Union of North America 536-2581-0100
Local 693 (Local Union); Laborers' International 536-2581-0140
Union of North America (LIUNA), an agent of 536-2581-0180-5000
the Local Union; and, Laborers' International 536-2581-3384
Union of North America Local 693 and the 712-5014-0100
Trustee, an agent of LUINA 712-5014-0120
Collins, MS 712-5014-0160
Cases 15-CB-129790, 15-CB-129826, and 712-5042-0100
15-CB-129832 712-5042-3380-7500
712-5042-6767
712-5042-6783-8300

The Region submitted this case for advice as to whether: 1) Laborers' International Union of North America ("International") is liable for Laborers' International Union of North America, Local 693's ("Local") unlawful failure to process the Charging Party's grievances; and 2) liability against the International is barred by Section 10(b).¹

We conclude the International, through the conduct of its Trustee and Deputy Trustee (collectively, "Trustees"), is jointly liable for the Local's failure to properly process the grievances. We also conclude that Section 10(b) is not a bar to finding the International liable due to the joint relationship that existed during the pertinent time frame. The Region should therefore issue complaint, absent settlement, against the Local and International.

FACTS

The Charging Party worked for Sanderson Farms, Inc. ("Employer") and received a number of disciplinary actions in 2011 and 2012 that culminated in (b) (6), (b) (7)(C) discharge in

¹ The Region has determined that the failure to process the Charging Party's grievances violated Section 8(b)(1)(A).

August 2012. The Charging Party and the Union filed unfair labor practice charges challenging those adverse employment actions. In the spring of 2013, the Charging Party requested that the Local file grievances against the Employer on (b) (6), (b) (7)(C) behalf challenging (b) (6), (b) (7)(C) discipline and discharge. The Local agreed to file grievances and, in May 2013, the Region deferred the related unfair labor practice charges to the parties' grievance/arbitration process.

On June 12, 2013, the International gave the Local notice that it was investigating whether the Local should be placed in Trusteeship and, on June 26, 2013, a Trusteeship hearing was held in accordance with the International's Constitution and Bylaws. Article IX, Section 7 of the International's Constitution states, in pertinent part:

During the period of trusteeship, all the officers and delegates of the subordinate body are relieved of their particular trust. . . . The subordinate body and the officers and members thereof shall cooperate with the trustee . . . designated by the General President, in order that the purposes of the trusteeship . . . may be accomplished as soon as possible. The trustee . . . shall be authorized to take full charge of the affairs of the subordinate body, to appoint temporary officers or employees at any time during the trusteeship . . . , and to take such other action as, in the trustee's . . . judgment, is necessary for the preservation of the subordinate body and its interests. The trustee . . . shall, from time to time, report on the affairs and transactions of the subordinate body to the General President. The General President may remove trustees . . . at any time and appoint successor trustees

The International Union shall not be responsible for any actions or activities of the Local Union or subordinate body unless such actions or activities have been directed or authorized by the trustee or supervisor and unless such actions or activities were undertaken in the trustee's or supervisor's capacity as a representative of the International Union and not in such official's capacity as a fiduciary of the subordinate body. Actions undertaken by the trustee or supervisor in the capacity of fiduciary of the subordinate body shall not be the responsibility of the International Union unless such actions have been directed or authorized by the International Union.

On September 17, 2013, the International's General President issued a letter to the Local's members appointing the International's Vice President as Trustee and a Regional Representative for the Ohio Valley and Southern States Region as Deputy Trustee of the Local. The letter specified the authority the Trustees had over the Local:

Pursuant to Article IX, Section 7 of the International Union Constitution, the Trustee shall be authorized to exercise all of the powers and responsibilities set forth in that Section, to take full charge of the affairs of [the Local] during the period of Trusteeship and to take any and all action that, in the Trustee's or Deputy Trustee's judgment, is necessary to preserve or manage the subordinate body and to protect the interests of the membership. Such authority shall include, but will not be limited to, the power (a) to appoint, terminate or replace any employees; (b) to appoint and supervise stewards; (c) to retain lawyers, accountants, other professionals, and service providers on behalf of [the Local]; (d) to retain persons to assist him in the exercise of his responsibilities; (e) to assume control and authority over the Local Union's financial affairs; and, (f) to preside over all meetings of the Local Union. . . .

Your Local Union has been directed to cooperate fully with the Trustee or Deputy Trustee, whom I have designated, in order that the purposes of the Trusteeship may be fulfilled and the autonomy of your Local Union restored as soon as possible.

On October 22, 2013, about one month after the Local was placed under Trusteeship, the Trusteeship's attorney informed the Region that the Local's grievances on behalf of the Charging Party were still pending. On December 2, 2013, the Employer's attorney contacted the Region and reaffirmed that one of the grievances was "pending arbitration and, more likely, settlement between the company and the [L]ocal [U]nion's [T]rustee." On January 24, 2014, the Employer's attorney informed the Region the other two grievances were also still "pending arbitration and more likely resolution between the local union and the company."

On February 4, 2014, the Deputy Trustee requested to withdraw the unfair labor practice charges relating to the Charging Party's grievances. The Deputy Trustee's request did not indicate the status of the grievances. When the Region contacted the Charging Party about the Deputy Trustee's withdrawal request, (b) (6), (b) (7)(C) indicated that the Deputy Trustee had not spoken with (b) (6), (b) (7)(C) about withdrawing the charges and (b) (6), (b) (7)(C) opposed the Deputy Trustee's request. In light of the Charging Party's opposition, and the fact that (b) (6), (b) (7)(C) had filed one of the charges (b) (6), (b) (7)(C), the Region denied the Deputy Trustee's request to withdraw the charges and revoked the deferrals it had issued back in May 2013.

On April 4, 2014, the Deputy Trustee met with the Charging Party for the first time to discuss the unfair labor practice allegations concerning (b) (6), (b) (7)(C) discipline and discharge and the merits of the related grievances. On May 14, 2014—a full year after the Local had informed the Charging Party it would file grievances on (b) (6), (b) (7)(C)

behalf—the Deputy Trustee informed the Charging Party the Local would not pursue (b) (6), (b) grievances after all.

Thereafter, Charging Party timely filed the instant unfair labor practice charges against the Local on June 2, 2014. The Region held the unfair labor practice charges against the Local in abeyance while the Employer attempted to have the charges against it dismissed in District Court. After the District Court denied the Employer’s petition and the Fifth Circuit Court of Appeals affirmed the District Court’s denial, the Region issued complaint against the Employer over its discipline and discharge of the Charging Party. On November 7, 2016, as the Region was preparing to issue complaint against the Local for failing to process the Charging Party’s grievances through to arbitration, the Region learned that the Local no longer existed. On November 23, 2016, the Charging Party amended the unfair labor practice charges against the Local to include the International.

ACTION

The Region should issue complaint, absent settlement, against the Local and International because the International, through its Trustees, is jointly liable for the Local’s unlawful failure to process the Charging Party’s grievances and, because of that joint relationship, Section 10(b) does not bar finding the International liable.

I. The International is Liable under Common Law Agency Principles

It is well-settled that a labor organization is not automatically responsible for the actions of its affiliates.² The common law principles of agency, however, are one method through which liability for a local affiliate’s actions may be extended to an international union.³ As noted by the Board, agency is derived from the mutual

² See *Coronado Coal Co. v. United Mine Workers of America*, 268 U.S. 295, 304-05 (1925) (reaffirming *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344, 395-96 (1922) (ruling that an international union is not inherently liable for the acts of its affiliates just as a corporation is not inherently liable for the acts of its agents)).

³ *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212, 216-17 (1979) (ruling that “the legislative history is clear that Congress limited the responsibility of unions . . . to cases when the union may be found responsible according to the common-law rule of agency”); see *International Union’s Financial Responsibility for the Violations of a Local*, Advice Memorandum, dated November 29, 1988 (noting agency as one of three approaches to finding an international union liable for the actions of a local).

consent of principal and agent that the agent shall act for the principal.⁴ As a result of this relationship, a principal may be responsible for the act of his agent within the scope of the agent's general authority, even in circumstances in which the principal specifically forbade the act in question, because the agent was empowered by the principal to represent him in that general capacity.⁵

The Board has consistently used agency principles to find an international union liable for its affiliated local union's unfair labor practices when the international union appoints a trustee to act as its agent and control the affairs of the local union subject only to the supervision of the international.⁶ Regardless of whether the

⁴ *Int'l Longshoremen's and Warehousemen's Union*, 79 NLRB 1487, 1508 (1948).

⁵ *Id.* at 1508-09.

⁶ See e.g., *International Brotherhood of Teamsters*, 201 NLRB 787, 787 n.1, 791 (1973) (affirming ALJ's finding that the international union was jointly and severally liable for the local's conduct because the trustee acted as an agent of the international when he was appointed under the authority of the international's general president to take full and complete control of the local, he was subject to the general president's continuing supervision, and could be removed and replaced by a successor trustee at any time); *Local 542, IUOE, AFL-CIO*, 141 NLRB 53, 55, 70 (1963) (clarifying that the Board agreed with the ALJ holding the international union jointly and severally liable solely because the trusteeship "squarely vested the [i]nternational with full and complete control over the [l]ocal's activities" and not because the constitution fell short of creating independent, autonomous locals), *enforced* 329 F.2d 512 (3d Cir. 1964); *Local 612, Int'l Brotherhood of Teamsters, Etc.*, 121 NLRB 1571, 1585 (1958) (affirming ALJ's finding the trustee and international union "equally responsible" for the local's 8(b)(4)(A) violations because during the material times of the case the trustee was in full charge of the affairs of the local, pursuant to an appointment by the international, with power to designate and remove the officers of the local); *International Brotherhood of Teamsters*, 119 NLRB 1268, 1270 (1958) (affirming the ALJ's finding that the trustee and international share responsibility for the conduct of the local because of the direct control the president-appointed trustee had over the policies and operations of the local); *International Brotherhood of Teamsters, Etc.*, 117 NLRB 1401, 1405-06 (1957) (affirming the ALJ's finding the trustee and international liable because, even though the trustee allowed the local officers to conduct the day-to-day operations, the local was under the full control of the trustee by virtue of the appointment and the international constitution); *Albert Evans, Etc.*, 110 NLRB 748, 749 (1954) (reversing the ALJ's decision and holding the international liable because the trustee had full and complete control by virtue of the appointment by the international, in accordance with its constitution).

trustee was personally involved in the local affiliate's unfair labor practice, the international union can be held liable for the local's conduct if it has usurped sufficient authority from the local and placed it in the hands of its agent: the trustee.⁷ For example, in *International Brotherhood of Teamsters*, the Board affirmed the ALJ's finding of liability where the trustee did not personally participate in the threats and violent conduct of the local, but had appointed a business agent who played a key role in the illegal activity.⁸ In finding the international union "clearly liable" for the violations despite the trustee's lack of personal involvement in the unlawful conduct, the ALJ focused solely on the facts that the trustee was appointed under the authority of the international's general president to take full and complete control of the local, he was subject to the general president's continuing supervision, and he could be removed and replaced by a successor trustee at any time.⁹ Thus, the unlawful conduct occurred while the trustee was in charge, and the international was liable because the trustee was acting as its agent and on its behalf.¹⁰

In this case, the International is liable for the Local's failure to properly handle the Charging Party's grievances because the Trustees—just like those in *International Brotherhood of Teamsters* and the other cases cited above—had complete control over the Local's affairs, were acting on behalf of the International, and were subject to removal only by its President.¹¹ In addition, although it's not necessary to establish liability, it appears that the Deputy Trustee was in fact personally involved in the unfair labor practice. Given the extent and nature of the control exhibited by the International over the Local through its agents, the Trustees, we reject the International's assertion that it cannot be held liable because of self-

⁷ See *International Brotherhood of Teamsters*, 119 NLRB at 1283 (finding liability by virtue of trusteeship despite there being no evidence the trustee or the international induced the illegal conduct); *General Drivers, Etc.*, 109 NLRB 275, 279 (1954) (rejecting trustee's denial of liability because, regardless of whether the trustee had knowledge of the illegal picketing, he still had direct charge of the affairs and subordinates of the local), *enforcement denied* 225 F.2d 205 (1955) (denying enforcement because the evidence failed to substantiate finding a violation of the Act).

⁸ *International Brotherhood of Teamsters*, 201 NLRB at 787 & n.1, 791.

⁹ *Id.* at 791.

¹⁰ See *id.*

¹¹ *Id.*; see *supra* note 6.

serving language in its constitution that attempts to limit its liability despite its control over a trustee Local.¹²

II. Section 10(b) is not a bar to Finding the International Liable

Section 10(b) provides, in pertinent part, “[t]hat no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.” In *Ref-Chem Co.*, however, the Board found that the nature of a joint-employer relationship compelled finding that a timely charge filed against one employer within the Section 10(b) period also constituted a timely charge against the second employer.¹³ In subsequent cases, the Board has applied this same reasoning to unions engaged in a joint representation of their members.¹⁴

¹² See *Int’l Longshoremen’s and Warehousemen’s Union*, 79 NLRB at 1509 n.44 (quoting 93 Cong. Rec. 7001 (daily ed. June 12, 1947) (remarks of Senator Taft) (noting Congress cognizantly restored the common law rule in cases arising under the Act so that unions could not “escape liability for the illegal action of their officers . . . simply by passing a standing resolution disclaiming such responsibility”)); cases cited *supra* note 6. We also conclude that *NLRB v. Amax Coal Company*, 453 U.S. 950 (1981) and *Campbell v. Int’l Broth. Teamsters*, 69 F.Supp.2d 380 (E.D. NY 1999), cited by the International, are inapposite. *Amax* is about the fiduciary obligations of trustees of a pension and welfare fund; a completely separate and distinct area of labor law that is controlled by common law principles of formal trusts and ERISA regulations that are not applicable here. See *Amax Coal Company*, 453 U.S. at 329-32. *Campbell* is of questionable persuasion because of the district court’s dismissal of the case due to a flawed pleading and not on the merits of whether the international was liable for its trustee, and because of the court’s misinterpretation of a union trusteeship case upon which it relied. See *Campbell v. Int’l Broth. Teamsters*, 69 F.Supp.2d at 386 (citing *Tile, Marble, Terrazo, Finishers, Shopworkers, and Granite Cutters v. Ceramic Tile Finishers Union*, 972 F.2d 738, 746-47 (7th Cir. 1992) (analyzing trustee’s obligations based on a contractual, rather than a fiduciary, obligation)).

¹³ *Ref-Chem Co.*, 169 NLRB 376, 380 (1968), *enforcement denied* 418 F.2d 127 (5th Cir. 1969).

¹⁴ *Electrical Workers IUE (Spartus Corp.)*, 271 NLRB 607, 607 (1984) (altering ALJ’s order and relying on *P & L Cedar Products* to clarify that service of charge on local was sufficient to constitute service to the international because of their status as joint representatives of the employees); *P & L Cedar Products*, 224 NLRB 244, 259 (1976) (ALJ applying *Ref-Chem Co.* to find that both the union council and local union were

Section 10(b) does not bar finding the International liable because the International and Local were engaged in joint representation of the employees, including the Charging Party, during the Trusteeship. On May 14, 2014, the Charging Party learned that the Deputy Trustee would not pursue [REDACTED] grievances and about two weeks later, well within the Section 10(b) time frame, the Charging Party filed the instant charges against the Local. In conformity with Board precedent, the Charging Party's timely charge against the Local constituted a timely filed charge, and service thereof, against the International due to their status as joint representatives during the pertinent time period.¹⁵

Accordingly, the Region should issue complaint, absent settlement, against both the International and the Local.

/s/
B.J.K.

ADV.15-CB-129790.Response.LIUNA. [REDACTED]

joint representatives of the employees and, therefore, the timely charge filed against the local union served as a timely charge filed against the union council).

¹⁵ *Spartus Corp.*, 271 NLRB at 607.