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

DATE: November 8, 2016

TO: William B. Cowan, Regional Director
Region 21

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

SUBJECT: Southern California Gas 512-5084-2500
Case 21-CA-164771 512-5084-5067

This case was submitted for advice as to whether an agreement between the Employer and the Union was unlawful because it stated that members of the Union would be given priority in filling internal job postings. We agree with the Region that the agreement was unlawful on its face.

The Employer is the major gas company in southern California. While most of the Employer's employees are in bargaining units jointly represented by locals of Utility Workers of America (Utility Workers) and International Chemical Workers Union Council (Chemical Workers), all of the employees in the Employer's Transmission and Storage Division are solely represented by Utility Workers Local 483 (the Union).[1] In the Union's collective-bargaining agreement with the Employer, current Transmission and Storage Division employees are expressly given a preference in filling any new job postings in that Division.

In July 2015, the Employer and the Union executed a letter agreement creating a pilot "UMAP" (Utility Workers Military Assistance Program), a special training program intended to assist military veterans to become qualified technicians in the Employer's Transmission and Storage Division. In the pilot UMAP letter agreement, there was language giving a preference to "Full Time Local 483 members" in filling internal job postings for the positions covered by the pilot UMAP. In November 2015, Chemical Workers filed the charge in the instant case, alleging, *inter alia,* that the Employer violated Section 8(a)(1) and (2) by executing the pilot UMAP letter agreement including this preference for the Union's members. The pilot UMAP ended in May 2016.

[1] The Union has no members other than unit employees in the Transmission and Storage Division.

We agree with the Region that the pilot UMAP letter agreement was unlawful on its face. The Employer and the Union contend that the letter agreement merely intended to give a promotional and lateral hiring preference to employees already in the Transmission and Storage Division, similar to that already in the collective-bargaining agreement. There is no evidence that contradicts that contention or indicates any intent to discriminate, or that any hiring decisions were made, based on Union membership. However, the language used in the pilot UMAP letter agreement, giving a preference to "Full Time Local 483 members," expressly favors the Union's members and, on its face, indicates to employees that there will be discrimination along Section 7 lines. In this regard, the Board has long held that, even where a discriminatory contractual union membership hiring requirement is not enforced, it is nonetheless unlawful.[2] Indeed, in at least one case, the Board found a violation where the union and the particular company officials involved in hiring weren't even aware of the contract's existence.[3] The provision at issue here is similarly unlawful, as it expressly provides an inducement for employees to become or stay full members of the Union, rather than financial core members (and/or members of Chemical Workers or other unions), in order to receive the preference in filling the relevant technician positions. Such manifest interference with employees' Section 7 rights to refrain from membership in the Union clearly violated Section 8(a)(1) of the Act.[4]

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[2] *See, e.g., Pantlind Hotel Co.*, 175 NLRB 815, 815 (1969) (continued maintenance of discriminatory union security and hiring provisions, "whether or not enforced as written," was unlawful); *Marley Co.*, 117 NLRB 107, 110 (1957) ("the Board, with court approval, has consistently held that maintenance of an unlawful contract, apart from its enforcement[,] is violative of the Act"); *New York State Employers Association, Inc.*, 93 NLRB 127, 128 (1951) ("we regard the execution of an illegal discriminatory contract to be *per se* violative of the right guaranteed employees to be free to engage in or refrain from engaging in collective bargaining activities . . . ."), *enforced sub nom. Red Star Express Lines of Auburn, Inc. v. NLRB*, 196 F.2d 78 (2d Cir. 1952).

[3] *Eichleay Corp.*, 110 NLRB 1295, 1296-97, 1304 (1954), *enforcement denied*, 230 F.2d 64, 65 (6th Cir. 1956) (denying enforcement, as the only timely violation was maintenance of the unlawful hiring provisions of the contract within the Section 10(b) period, and none of the local employer or union officials were aware of the existence of the contract).

[4] While it might be argued that the provision also violates Section 8(a)(2) of the Act by providing unlawful assistance to the Union, the essential violation here is that the provision interferes with employees' right to refrain from full Union membership, and the less evident Section 8(a)(2) allegation would provide no additional substantive remedy.

Accordingly, the Region should issue complaint alleging that the Employer violated the Act by executing the facially unlawful pilot UMAP agreement.

/s/
B.J.K.

ADV.21-CA-164771.Response.SoCalGas.(b) (6), (b) (7