



curtailment of work, sympathy strikes, picketing, or any interference with the Employer's operations.

Operating Engineers Local 150 ("Local 150") has geographic jurisdiction over portions of Indiana (including South Bend), Illinois, and Iowa. On November 3, 2015, Local 150 lost a representation election at the Employer's South Bend facility. On November 20, 2015, after filing a meritorious unfair labor practice charge against the Employer, Local 150 began an unfair labor practice strike at the South Bend facility that remains ongoing.

Routinely, including prior to the commencement of the strike by Local 150, unit employees from the Niles facility made deliveries to the Employer's customers at various locations throughout Indiana. These deliveries were made without any objection from Local 150. However, once Local 150 went on strike, it engaged in ambulatory picketing of the Local 324 employees from Niles at their delivery sites in Indiana. Local 150 would follow the Local 324 employees once they crossed into Indiana and would engage in picketing "between the headlights." Local 150 then followed the employees until they crossed back over the Michigan border.

On March 6, 7, and 18, 2016,<sup>1</sup> various Local 150 business agents and officials filed internal union charges against each of the seven Niles unit employees alleging violations of Local 150's bylaws regarding General Responsibilities and Obligations and the International Union's constitution regarding Travel Service Dues. Local 150 alleged that the Local 324 members were required to "clear in" with Local 150 and pay travel service dues to make deliveries in Indiana, which is Local 150's geographic jurisdiction, and that the Local 324 members had violated Local 150's bylaws by crossing picket lines and interfering with their labor dispute. The Local 324 members filed written responses to the internal union charges. Local 150 asserts that the Local 324 members did not raise at this time the no-strike clause in the Local 324-Employer contract as a defense. On or about March 17, the Local 324 members met with the Employer and asked that it no longer assign them delivery work to jobsites in Indiana due to the internal union charges. The Employer then began utilizing a subcontractor to perform the deliveries. As a result, the Niles employees have suffered a reduction in hours worked because they are no longer making deliveries to Indiana.

On May 17, the Charging Party, a member of Local 324 who works at the Niles facility, called Local 150 and asked to be "cleared in." Local 150 told the Charging Party that none of the Niles employees would be cleared in.

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<sup>1</sup> All subsequent dates are in 2016 unless otherwise specified.

On May 19, Local 150 held a trial regarding the charges against the seven Local 324 members. Each employee was found guilty and fined \$20,000. On May 27, Local 150 notified the Local 324 members of the verdict and requested payment of the fines. Local 150 also notified Local 324 of the fines, as the International Union's constitution requires that fines levied by a local union against members of a sister local be entered into the books of the sister local to which the members belong and then remitted to the local union that levied the fine. The Local 324 members filed an appeal with the International Union's Executive Board and requested that collection of the fines be stayed pending their appeal, which the Executive Board granted.

On December 12, 2016, Locals 150 and 324 entered a memorandum of understanding ("MOA") to resolve the issue of the pending fines against Local 324's members. The International Union had convened a panel to assist the locals in reaching this agreement. Local 324 agreed in the MOA that its collective-bargaining agreement with the Employer did not extend beyond Michigan. Based on that agreement, Local 150 asserts that the no-strike clause in the Local 324-Employer contract had no effect at the South Bend facility, which is outside of Local 324's geographic jurisdiction.<sup>2</sup> At the same time, Local 150 agreed in the MOA to withdraw the internal charges against the Local 324 members with prejudice. Local 150 also agreed that no new charges would be filed against them for events that occurred before the date of the MOA. Local 150 asserts that because the internal charges have now been withdrawn, the unfair labor practice charge should be dismissed.

### ACTION

We conclude that Local 150 violated Section 8(b)(1)(A) by restraining and coercing the Local 324 members through internal charges and fines to compel them to breach the no-strike clause of their collective-bargaining agreement. Thus, complaint should issue, absent settlement.

The Supreme Court held in *Scofield v. NLRB* that a union may "enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress imbedded in the labor laws, and is reasonably enforced against members who are free to leave the union and escape the rule."<sup>3</sup> The Court clarified that when a

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<sup>2</sup> Paragraph 2 of the MOA states, in part, that "Locals cannot extend the territorial extent of a local union or a local union collective bargaining agreement outside of the territory of the that [sic] local union absent approval from the International or the written agreement of the two locals."

<sup>3</sup> 394 U.S. 423, 430 (1969).

union rule “invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating § 8(b)(1).”<sup>4</sup> Based on this fundamental principle,

the internal enforcement of a union rule has been found to violate Section 8(b)(1)(A) where discipline is imposed against union members for filing or encouraging others to file charges with the Board, or for refusing to cross an unlawful picket line, or for the purpose of coercing members to participate in conduct violative of the Act. In addition, the use of discipline or threat of discipline to compel union members into acting in contravention of a collectively bargained-for agreement has been recognized as falling beyond the scope of permissible internal union discipline under the proviso to Section 8(b)(1)(A).<sup>5</sup>

It logically follows, however, that where internal union discipline adheres to the requirements set out in *Scofield* by, among other things, not contravening a policy expressed in the Act, no violation of Section 8(b)(1)(A) occurs.<sup>6</sup>

As noted above, union discipline that compels members to breach a collective-bargaining agreement contravenes federal labor law policy and thus violates Section 8(b)(1)(A).<sup>7</sup> “[T]he express and fundamental policy of the Act [is] to encourage the practice and procedure of collective bargaining as an important means for achieving industrial peace and stability. . . . And, furtherance of this policy necessarily includes

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<sup>4</sup> *Id.* at 429.

<sup>5</sup> *Stationary Engineers Local 39 (San Jose Hospital & Health Center)*, 240 NLRB 1122, 1123 & nn.6-9 (1979) (citations omitted).

<sup>6</sup> *See, e.g., Paperworkers Local 5 (Int’l Paper Co.)*, 294 NLRB 1168, 1170-72 (1989) (union did not violate Section 8(b)(1)(A) when it charged and fined its members for not leaving their temporary non-unit positions, where union believed the employer was relying on unit employees in those non-unit positions at one plant so it could send supervisors to endure a strike by a sister local at another plant; because the evidence did not show the employer could compel unit employees to remain in the temporary non-unit positions, the union’s conduct did not violate federal labor policy as a unilateral change, partial strike, or breach of the no-strike clause).

<sup>7</sup> *See, e.g., Stationary Engineers Local 39 (San Jose Hospital & Health Center)*, 240 NLRB at 1123-24 (union’s expulsion of member based on his activity during recent strike against employer was in contravention of an amnesty agreement negotiated between the union and employer and violated Section 8(b)(1)(A)) (citing *Scofield*, 394 U.S. at 430).

the encouraging of adherence to the provisions of collective-bargaining agreements.”<sup>8</sup> Thus, although the Section 8(b)(1)(A) proviso permits a union to levy fines against members who crossed a picket line during a lawful strike,<sup>9</sup> Section 8(b)(1)(A) prohibits a union from fining members who crossed a picket line where their collective-bargaining agreement contained a no-strike provision.<sup>10</sup> Similarly, a union violates Section 8(b)(1)(A) if it tells its members not to perform their normal duties in order to honor another union’s picket line and threatens to fine them if they cross the picket line, provided that the union is party to a collective-bargaining agreement that contains a no-strike clause prohibiting sympathy strikes, because the union’s conduct authorizes a strike or work stoppage in contravention of its obligations under the collective-bargaining agreement.<sup>11</sup>

In *Elevator Constructors Local 97 (Hobson Elevator Co.)*, the Division of Advice applied the foregoing principles and concluded that a union had violated Section 8(b)(1)(A) when it threatened to file internal charges against the member of a sister local if he accepted a work assignment from an employer temporarily operating in the union’s geographic jurisdiction.<sup>12</sup> The sister local’s collective-bargaining agreement

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<sup>8</sup> *Id.* at 1124.

<sup>9</sup> *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, 195 (1967).

<sup>10</sup> See, e.g., *Mine Workers Local 12419 (National Grinding Wheel Co.)*, 176 NLRB 628, 632 (1969) (finding violation where union fined employees for crossing picket line of sister union where collective-bargaining agreement contained a no-strike clause); *Communication Workers Local 1197 (Western Electric Co.)*, 202 NLRB 229, 230-31 (1973) (violation where union fined employees for crossing picket the picket line of a sister union where the sister union was picketing a different employer in the same building and the employees’ collective-bargaining agreement had a no-strike clause); *Carpenters Local 1780 (Reynolds Electrical & Engineering Co.)*, 296 NLRB 412, 418-19 (1989) (violation where union fined construction employees for crossing the maintenance employees’ picket line where the employees were in two different units but represented by the same union at the same employer’s facility; the relevant contract barred sympathy strikes); *Teamsters Local 688 (Frito-Lay, Inc.)*, 345 NLRB 1150, 1152 (2005) (violation where union told members not to cross a picket line established by another union and fined them for doing so where their collective-bargaining agreement contained a no-strike provision prohibiting sympathy strikes).

<sup>11</sup> *Frito-Lay, Inc.*, 345 NLRB at 1152.

<sup>12</sup> Case 19-CB-6700, Advice Memorandum dated August 28, 1990.

with the employer contained a no-strike clause.<sup>13</sup> As a result of the union's threat of internal discipline, the member declined the work assignment and lost two weeks' work.<sup>14</sup> Advice reasoned that the union had restrained and coerced the member in violation of Section 8(b)(1)(A) because it prevented him from accepting assigned work from the employer, thereby forcing him to engage in a strike against the employer in violation of the no-strike clause the sister local had agreed to in its contract with the employer.<sup>15</sup> By using the threat of internal union discipline to coerce the member, albeit of a different local, to withhold his labor from the employer, the union lost the protection of *Scofield* by impairing federal labor policy, specifically, causing the breach of a contract through the use of a prohibited strike to resolve a labor dispute.<sup>16</sup>

Applying these principles here, Local 150 violated Section 8(b)(1)(A) because the internal union charges it filed against the seven Local 324 members also impaired policies imbedded in the federal labor laws, specifically, requiring those members to breach the no-strike clause in the Local 324-Employer contract. Local 150's conduct left the Local 324 members with no choice but to withhold certain services from the Employer. Indeed, the members asked the Employer to no longer assign them delivery work to locations in Indiana, and they suffered a loss of hours and pay as a result. At the same time, the Employer was required to enlist the services of a subcontractor to perform that work. Thus, notwithstanding the broad no-strike provision in the contract between Local 324 and the Employer, Local 150's conduct required Local 324's members to engage in conduct that breached it. In short, by engaging in conduct that resulted in violating federal labor policy, Local 150 lost the protection of *Scofield*.<sup>17</sup>

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<sup>13</sup> *Id.* at p. 1. The contract between the sister local and employer stated that if the employer performed work in another local's geographic jurisdiction, the employer would observe that local's wage scale and use its hiring hall. However, the contract stated that unless the employer had a regular workforce in the other local's area, the employer could retain a number of key employees from elsewhere. In addition to the no-strike clause, this contract contained a grievance-arbitration procedure.

<sup>14</sup> *Id.* at p. 2.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> We agree with the Region that the appropriate remedy in this case is that Local 150 cease and desist requiring the Local 324 members to withhold their labor from the Employer, post a notice, and pay backpay for the wages and benefits the employees lost from withholding their labor.

Although Local 150 sets forth several defenses, they each lack merit. First, Local 150 asserts that the Board has found a union to have violated Section 8(b)(1)(A) for fining members who crossed a picket line only where the union coerced its *own* members to not abide by a no-strike clause to which it previously had agreed.<sup>18</sup> Local 150 argues that under that precedent, it could not violate Section 8(b)(1)(A) here because it neither represents the members nor is a party to the contract with the Employer containing the no-strike clause that waived their statutory right to strike. Apparently, Local 150's position is that in these circumstances it is not contravening federal labor policy by discouraging the Local 324 members from adhering to that contract.

This first defense fails because it ignores the principles first established in *Scofield*. If a union imposes internal discipline that impairs federal labor policy, it violates Section 8(b)(1)(A).<sup>19</sup> The fact that Local 150 is not the employees' home local is irrelevant. As discussed above, Local 150's internal charges and fines impaired federal labor policy by causing the seven Local 324 members working for the Employer to breach the no-strike clause of their collective-bargaining agreement. Despite Local 150's characterization of extant precedent, it fails to cite any case where the Board has held that a union's fines can violate Section 8(b)(1)(A) only with respect to its own members.<sup>20</sup> To the contrary, the Board repeatedly has held that a union can violate Section 8(b)(1)(A) by imposing internal discipline on the members of a sister local to coerce them into activity that undermines federal labor policy.<sup>21</sup>

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<sup>18</sup> See, e.g., *Frito-Lay, Inc.*, 345 NLRB at 1152, 1159.

<sup>19</sup> See *Scofield v. NLRB*, 394 U.S. at 430. Because the theory of violation here is based on well-established principles that are decades old, there is also no merit to Local 150's attempt to argue that finding a violation here requires the General Counsel to seek a change in the law.

<sup>20</sup> Cf. *Plumbers Local 624 (Power Piping Co.)*, 211 NLRB 942, 945 (1974) (finding, among other violations, that union had violated Section 8(b)(1)(A) by threatening its members and "travel card members" from sister locals with internal union charges if they filed a Board charge without exhausting internal remedies).

<sup>21</sup> *Id.* See also *Operating Engineers Local 77 (Potts & Callahan, Inc.)*, 298 NLRB 8, 9-10 (1990) (finding respondent-local had violated Section 8(b)(1)(A) by charging and fining members of sister local who crossed picket line and refused to engage in a work stoppage against their neutral employer, which would have caused an unlawful secondary boycott under Section 8(b)(4)(B)); *Orange County Dist. Council of Carpenters*, 242 NLRB 585, 587 (1979) (same). Local 150 appears to concede that a union violates Section 8(b)(1)(A) when it fines members for refusing to engage in a

Moreover, by notifying Local 324 of the resulting fines after the May 19 trial on the charges, Local 150 clearly had been aware of the foreseeable consequences of its conduct, which included both the members withholding their services and the fact that Local 324 would have to collect the fines against its own members as required by the International Union's constitution. In other words, Local 324 who does represent the members and agreed to the no-strike clause, would be enforcing the internal discipline. By compelling Local 324 to enforce the internal discipline against its own members, Local 150 must be held accountable for the foreseeable consequences of its conduct.<sup>22</sup>

Second, Local 150 attempts to argue that the no-strike clause in the Local 324-Employer contract had no effect outside of Local 324's geographic jurisdiction. It asserts that absent the International Union's approval, a local's contract does not apply outside of its geographic jurisdiction. Local 150 also relies heavily on the MOA that it recently entered with Local 324 in which the latter agreed that its contract with the Employer, including the no-strike clause, did not apply at the South Bend facility where Local 150 was picketing because that contract did not extend beyond Michigan. Regardless of the International Union's internal rules or the MOA, Local 150 fails to cite any Board or court cases to support its position. More important, this argument misses the point. Even if the Local 324 members would not have breached the no-strike clause by honoring Local 150's picket line at the Employer's South Bend facility because they were outside of Michigan, they still would have breached the no-strike clause with regard to their Employer at the Niles facility in Michigan. Put

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strike that would violate Section 8(b)(4)(B). It asserts, however, that such cases are a "limited exception" to the rule in *Allis-Chalmers*, 388 U.S. at 195, that a union does not violate Section 8(b)(1)(A) by bringing internal charges against members who cross a lawful picket line. Local 150's position is a self-invented, false limitation on the *Scofield* rule, which establishes that a union violates Section 8(b)(1)(A) if internal discipline of a member impairs a policy that Congress imbedded in the labor laws. See 394 U.S. at 429-30. Neither the Board nor the courts have recognized any limitation to that rule. See, e.g., *Retail Clerks Local 1179*, 211 NLRB 84, 87-88 (1974) (finding union violated Section 8(b)(1)(A) by imposing fines on its members for not honoring a picket line that violated Section 8(b)(7)(A) established by a different union), *enforced*, 526 F.2d 142 (9th Cir. 1975).

<sup>22</sup> *Teamsters Local 331 (Statewide Co.)*, 315 NLRB 10, 10 n.2 (1994) (finding union had violated Section 8(b)(1)(A) and (b)(2) by causing employer to discharge member of sister local because he was not a current member of the union; although employer rather than union had discharged the sister local's member, the Board noted "a union may be held accountable for results triggered by what on the surface appears an innocent act which the union well knew would produce a desired result").

simply, they were striking against their Employer in Niles by refusing to make assigned deliveries to the South Bend facility or other locations in Indiana as they historically had done. Thus, regardless of any potential geographic limitations of the no-strike clause, Local 150's internal charges contravened federal labor policy.

Finally, there is no merit to Local 150's defense that it should not be found to have violated Section 8(b)(1)(A) now because of the no-strike clause in the Local 324-Employer contract where the Local 324 members never made it aware of that clause as a defense to the internal charges. This defense is frivolous given that Local 150 took no steps to withdraw the internal charges against the members until Local 324 entered the MOA in mid-December and effectively agreed that its members would honor Local 150 picket lines in Indiana.

Accordingly, the Region should issue complaint, absent settlement, alleging that Local 150 violated Section 8(b)(1)(A).

/s/  
B.J.K.

ADV.07-CB-177422.Response.OperatingEngineersLocal150(MacAllisterRentals) (b) (6), (b) (7)