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

# Advice Memorandum

DATE: June 13, 2018

TO: M. Kathleen McKinney, Regional Director
Region 15

FROM: Jayme L. Sophir, Associate General Counsel
Division of Advice

SUBJECT: International Association of Heat and Frost Insulators and Allied Workers, Local 10
Case 15-CB-202344

The Region submitted this case for advice on whether Heat and Frost Insulators Local 10 ("Local 10" or "the Union") violated Section 8(b)(1)(A) by: (1) maintaining as one of its rules a provision from the constitution and bylaws of the International Union that prohibits members from "[m]aking known the business" of the Union to "any employer, employer-supported organization, or other union or organizations," and (2) disciplining the Charging Party for violating that rule by expelling [redacted] from its apprenticeship program and, as a result, revoking [redacted] membership in Local 10. We conclude that the charge allegation regarding maintenance of the rule should be dismissed, but that complaint should issue alleging that Local 10's application of the rule to the Charging Party violated Section 8(b)(1)(A) because the discipline Local 10 imposed affected [redacted] employment prospects and [redacted] Section 7 interests outweighed Local 10's interest in issuing the discipline.[1] (b) (5) [redacted]

## FACTS

Local 10 represents employees of Chicago Bridge & Iron Co. ("the Employer") through a project maintenance agreement. Unit employees work at a variety of the Employer's jobsites, including the Arkansas Nuclear One facility in Russellville, Arkansas. Local 10 operates an exclusive hiring hall to staff these jobsites, and it has

[1] The charge also alleged that Local 10 violated Section 8(b)(2) based on this conduct. That charge allegation, which will be addressed separately below, should be dismissed, absent withdrawal.

dispatched at least one non-member to work at the nuclear facility. Local 10's (b) (5) asserts that (b) (5) does (b) (5) best to refer individuals from the hall based on who has been out of work the longest, but notes that there are no rules for how referrals are to be made. (b) (5) described the hiring hall's referral process as informal.

Local 10 also operates an apprenticeship program, which generally takes four years for someone to complete. The apprenticeship program is not a product of the collective-bargaining agreement. Pursuant to the International Union's constitution and bylaws, which are binding on Local 10 and its members, apprentices receive a percentage of full journeyman hourly wages.[2] The percentage increases in each year of the program. The constitution and bylaws set forth the minimum percentages that apprentices receive at each year, and also provides that those rates "may be modified when necessary to acquire and protect the work of our trade and its members." After completing the program and passing an examination, the apprentice becomes a full mechanic or journeyman and receives "scale" wages. In certain circumstances where an apprentice is performing well, Local 10 can suggest to an employer that the apprentice receive a wage rate above what is typically given at his or her current year in the program. The Union asserts that it considers multiple factors in deciding whether to rank an apprentice higher than the apprentice's actual year in the program, including the apprentice's prior experience in the field, positive work performance, and accelerated skills education. Local 10 informs the employer, who has to sign a change-of-rate form for the apprentice. Some second or third-year apprentices working at the Arkansas Nuclear One facility received scale wages, for example, and some second-year apprentices received third-year wages.[3]

Local 10 maintains an Apprentice Committee that, among other things, can discipline or expel apprentices from the program for failing to complete lessons or violating Union rules. Under the International Union's constitution and bylaws, removal of an apprentice from the program also automatically cancels his or her Union membership.[4] Article XXIV, Section 1(i) of the constitution and bylaws

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[2] See International Union's Constitution and Bylaws, Article XIX, Section 4 (stating that the constitution and bylaws are binding on affiliated local unions and their members).

[3] Local 10 also was aware that sister locals engaged in the same practice. For example, (b) (4) .

[4] *See* International Union's Constitution and Bylaws, Article III, Section 4.

provides that members "may be penalized" for "[m]aking known the business of the International Association or any of its local unions to any employer, employer-supported organization, or other union or organizations, or to the representatives of any of the foregoing."

In (b) (6), (b) (7)(C) 2016, the Charging Party joined Local 10 and its apprenticeship program, and was referred to multiple jobs over the following ten months. Local 10 referred the Charging Party to an Employer project at Arkansas Nuclear One from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) 2016, and again from about (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) 2017. When (b) (6), (b) began the apprenticeship program, the Charging Party had experience working at the nuclear plant and had done asbestos removal, which is part of Local 10's work at other facilities.

The Charging Party asserts that (b) (6), (b) learned in August 2016 that the Union represented to employers that some apprentices were skilled above their year in the apprenticeship program, which resulted in those individuals being paid at rates higher than their actual year in the program. The Charging Party also knew that some apprentices were being compensated at the full journeyman scale, and (b) (6), (b) had shared (b) (6), (b) complaint about not receiving the journeyman wage rate with other apprentices, who apparently informed the Charging Party they feared getting in trouble if they voiced that complaint. (b) (6), (b) soon informed Local 10's (b) (6), (b) (7)(C) that (b) (6), (b) also wanted to be paid at journeyman scale. The (b) (6), (b) (7)(C) replied that it was not up to (b) (6), (b) (7), but that a member of Local 10's Apprentice Committee made that decision. There is no evidence that any deviations from the apprenticeship year-based wage rate were tied to longevity of membership in the Union or other improper considerations. In (b) (6), (b) (7)(C) 2017, when Local 10 again dispatched the Charging Party to the Employer's project at Arkansas Nuclear One, (b) (6), (b) received third-year apprentice wages even though it was only (b) (6), (b) second year in the apprenticeship program.[5]

Around (b) (6), (b) (7)(C) the Charging Party learned that (b) (6), would be laid off of the Arkansas Nuclear One project with six other insulators on (b) (6), (b) (7)(C) due to a decrease in work. Later on (b) (6), (b) (7)(C) the Charging Party went to Local 10's (b) (6), (b) (7)(C) and told (b) (6), (b) that Local 10 was misclassifying apprentices and that (b) (6), (b) needed to talk to Employer's (b) (6), (b) (7)(C) and human-resources officials about it. Local 10's (b) (6), (b) (7) (b) (6), (b) (7)(C) asked (b) (6), (b) (7) for a written statement, and the Charging Party wrote, among other matters unrelated to wage rates, that other apprentices with (b) (6), (b) same work experience were being paid scale, but (b) (6), was not. In (b) (6), (b) statement (b) (6), (b) again asserted that (b) (6), (b) needed to speak with Employer officials. Later that day, the

[5] All subsequent dates are in 2017.

Charging Party met with Local 10's (b) (6), (b) (7)(C), the Employer's (b) (6), (b) (7)(C), and two of the Employer's human-resources representatives. (b) (6), (b) stated that Local 10 was wrongly marking some apprentices at the top of the scale and that those individuals were thus getting paid more than they should. (b) (6), (b also said that (b) (6), was a second-year apprentice making third-year wages, and stated that (b) (6), (b wanted to make scale. Before this meeting, the Charging Party had never before spoken to the Employer about apprentice classifications.

On (b) (6), (b) (7)(C) the Employer laid off the Charging Party and six other insulators as part of the reduction in force. (b) (6), (b again met with Employer officials the next day, and repeated that Local 10 had misclassified apprentices by ranking them in higher pay grades than they should have been.

About one week after the Employer laid off the Charging Party, the Employer contacted Local 10's (b) (6), (b) (7)(C) to follow up on certain statements the Charging Party had made to the Employer's (b) (6), (b) (7)(C). The (b) (6), (b) (7)(C) inquired about, among other things, the Charging Party's statement that Local 10 ranked apprentices higher than their actual year in the apprenticeship program. The (b) (6), (b) (7)(C) explained that apprentices are ranked according to what the program decides they should be paid based on experience and the nature of the work. After this meeting with the Employer's (b) (6), (b) (7)(C), Local 10's (b) (6), (b) (7)(C) set up an internal Local 10 meeting to discuss whether the Charging Party's statement to the Employer had violated the constitution and bylaws.

On (b) (6), (b) (7)(C) the Apprentice Committee voted unanimously to expel the Charging Party from the apprenticeship program for violating the prohibition in Article XXIV, Section 1(i) against "making known the business" of the Union to an employer. Specifically, they found that the Charging Party violated that provision by telling Employer officials that apprentices were making scale wages. The Charging Party appealed the initial decision at a (b) (6), (b) (7)(C) meeting of the Apprentice Committee, but the expulsion was upheld. As a result of (b) (6), (b) expulsion from the apprenticeship program, Local 10 also removed the Charging Party from its membership. The Charging Party can reapply to the apprenticeship program and for Union membership, but (b) (6), (b has not done so.

## ACTION

Applying the Section 8(b)(1)(A) framework, we conclude that Local 10 did not commit an unfair labor practice by maintaining Article XXIV, Section 1(i) of the International Union's constitution and bylaws as one of its rules. Accordingly, the Region should dismiss that charge allegation, absent withdrawal. By contrast, Local 10's enforcement of that internal rule against the Charging Party violated

Section 8(b)(1)(A) because the discipline Local 10 imposed affected [redacted] employment prospects, and the Charging Party's Section 7 interests outweigh Local 10's interest in issuing the discipline. Thus, the Region should issue complaint on that charge allegation, absent settlement. (b) (5) [redacted].[6]

## A. The Section 8(b)(1)(A) Framework

Section 8(b)(1)(A) prohibits a union from "restrain[ing] or coerc[ing] employees in the exercise of the rights guaranteed in section 7."[7] Cabining the scope of that prohibition, Section 8(b)(1)(A) goes on to state that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."[8] Because of that proviso, the maintenance or enforcement of an internal union rule does not necessarily violate Section 8(b)(1)(A) just because it restrains Section 7 rights.[9]

Cases concerning the scope of Section 8(b)(1)(A) make clear that the Board generally will not police internal union rules and discipline.[10] Under the framework

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[6] Although the charge in this case also alleges that Local 10 violated Section 8(b)(2), that section of the Act is not applicable here. Whether Local 10 unlawfully maintained or enforced a rule would not be appropriately analyzed under Section 8(b)(2), which prohibits union actions that "cause or attempt to cause an employer to discriminate against an employee." 29 U.S.C. § 158(b)(2). Also, because the Employer laid off the Charging Party on [redacted] due to a decrease in work and without any involvement of Local 10, the prohibition of Section 8(b)(2) is not implicated in that personnel action. Thus, as noted above, the Region should dismiss this charge allegation, absent withdrawal.

[7] 29 U.S.C. § 158(b)(1)(A).

[8] *Id.*

[9] *See, e.g.*, *Teamsters Local 741 (A.B.F. Freight)*, 314 NLRB 1107, 1109 (1994) ("[T]he mere fact that the discipline is in reprisal for a Section 7 right is not sufficient to condemn the discipline.") (quoting *Boilermakers (Kaiser Cement)*, 312 NLRB 218, 220 (1993)).

[10] *See generally Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1424-26 (2000).

established in *Scofield v. NLRB*, a union may enforce a properly adopted rule without violating Section 8(b)(1)(A) if the rule "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."[11] By contrast, if a "rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced."[12]

The Board has applied the principles in *Scofield* to determine whether an internal union rule is facially overbroad. Based on those guiding principles, the Board held that a union violated Section 8(b)(1)(A) by maintaining a constitutional provision that prohibited resignation from the union unless the member "is not in arrears or delinquent in the payment of dues or other financial obligation and there are no charges filed and pending against her/him" and sends the resignation by registered or certified mail within ten days prior to the end of the local union's fiscal year.[13] The restrictions served no legitimate purpose and interfered with the Act's policy of voluntary unionism.[14] On the other hand, the Board has held that a union did not violate Section 8(b)(1)(A) by maintaining a rule requiring the presence of a union representative during investigatory interviews that may lead to discipline.[15] The rule served the legitimate union interest of ensuring the accuracy of statements made to the employer during such interviews and of allowing the union to properly represent employees during the grievance-arbitration process.[16] Moreover, the rule neither interfered with a member's employment, where he or she remained free to

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[11] 394 U.S. 423, 430 (1969). *See also IATSE Local 151 (Freeman Decorating Services)*, 364 NLRB No. 89, slip op. at 4 (2016), *enforced on other grounds*, 2018 WL 1461492 (8th Cir. 2018); *Sheet Metal Workers Local 550 (Dynamics Corp.)*, 312 NLRB 229, 229 (1993).

[12] *Scofield*, 394 U.S. at 429.

[13] *Auto Workers Local 148 (McDonnell-Douglas)*, 296 NLRB 970, 971 (1989).

[14] *Id.* at 971, 977 (quoting *Pattern Makers' League v. NLRB*, 473 U.S. 95, 104-05 (1985) (finding that union restrictions on members' right to resign was inconsistent with the Act's policy of "voluntary unionism")).

[15] *Sheet Metal Workers Local 550*, 312 NLRB at 229.

[16] *Id.*

make a statement during the investigatory interview if asked to do so by the employer, nor interfered with a member's statutory rights, where he or she could avoid the requirement of a union representative's presence by resigning from the union.[17]

Apart from its application to assessing whether an internal union rule is facially lawful, the legal analysis in *Scofield* has been applied to determine whether a union's enforcement of an internal rule violates Section 8(b)(1)(A). The analysis in *Scofield* "distinguish[es] between internal and external enforcement of union rules"— that is, whether enforcement of the rule impacts merely the relationship between unions and their members or the employment relationship — finding that Section 8(b)(1)(A) limits only the latter.[18] In *Office Employees Local 251 (Sandia National Laboratories)*, the Board further clarified this distinction and specified that a union could violate Section 8(b)(1)(A) if discipline pursuant to an internal rule "impacts on the employment relationship, impairs access to the Board's processes, pertains to unacceptable methods of union coercion such as physical violence . . . , or otherwise impairs policies imbedded in the Act."[19] Regarding the first category, discipline for violating union rules impacts the employment relationship if, for example, it involves a threat of discharge,[20] adversely affects a term of employment,[21] or deprives

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[17] *Id. See also IATSE Local 151*, 364 NLRB No. 89, slip op. at 4 (finding union did not violate Section 8(b)(1)(A) by maintaining provision in constitution and bylaws requiring members to consent to discipline under those documents and not "resort to outside tribunals until all remedies therein provided shall have been exhausted" even absent language denoting the four-month limitation on exhaustion of remedies in the LMRDA; the rule served the legitimate interest of providing the union with a method of resolving internal disputes internally, and the rule did not impair any labor policy where the constitution and bylaws expressly allowed members access to other forums after exhausting internal remedies and the four-month LMRDA limitation ensured that members had time to file Board charges).

[18] *Scofield,* 394 U.S. at 428; *see also Service Employees Local 254 (Brandeis University)*, 332 NLRB 1118, 1122 (2000) (asking whether union discipline had a "clear nexus to the employee-employer relationship").

[19] 331 NLRB at 1418-19; *see also Service Employees Local 254*, 332 NLRB at 1120 (noting that Section 8(b)(1)(A)'s prohibition applies only to "union conduct against union members that falls within several discrete areas").

[20] *Sandia*, 331 NLRB at 1424.

members of an opportunity to exercise rights provided in a collective-bargaining agreement.[22] In contrast are solely internal union sanctions such as fines, expulsion from the union, or removal from a union position.[23] The Board also has found a Section 8(b)(1)(A) violation, however, for fining members who exercise their Section 7 right to challenge union policies that implicate their interests as employees, such as by attempting to persuade fellow members to oppose their union's bargaining positions.[24] It has suggested that such actions have a nexus to the employment relationship because they are "related to the process by which the terms and conditions of . . . employment would be settled."[25]

If a union's enforcement of an internal rule does not fall within a *Sandia* exception, it remains a purely internal union matter and does not implicate Section 8(b)(1)(A) at all.[26] If it does fall within one of the exceptions, the Board will then go on to "balanc[e] the employees' Section 7 rights against the legitimacy of the union interest at stake in the particular case" to determine whether a union's enforcement

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[21] *See, e.g.*, *Electrical Workers (IBEW) Local 2321*, 350 NLRB 258, 262 (2007) (overtime eligibility).

[22] *Steelworkers Local 9292 (Allied Signal Technical Services)*, 336 NLRB 52, 54 (2001); *Service Employees Local 254*, 332 NLRB at 1121.

[23] *Scofield*, 394 U.S. at 428. *See also NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 193 (1967) (finding union did not violate Section 8(b)(1)(A) by imposing fines on union members who crossed a picket line during an authorized strike).

[24] *Operating Engineers Local 400 (Hilde Construction Co.)*, 225 NLRB 596, 600-02 (1976), *enforced mem.*, 561 F.2d 1021 (D.C. Cir. 1977); *see also Service Employees Local 254*, 332 NLRB at 1122 (describing employee's "Section 7 right to question the adequacy of his Union's representation of the bargaining unit and to seek to redirect his Union's policies and strategies"); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979) (recognizing "an employee's right to engage in intraunion activities in opposition to the incumbent leadership of his union").

[25] *Sandia*, 331 NLRB at 1424 (following *Hilde Construction*). Although the Board has questioned this principle, expressing doubt as to whether otherwise internal union discipline truly impacts the employment relationship just because it targets conduct directed at a union's dealings with the employer, *see Service Employees Local 254*, 332 NLRB at 1124, it has not overruled its decision in *Hilde Construction*.

[26] *Service Employees Local 254*, 332 NLRB at 1120.

of the rule is lawful.[27] Among the legitimate union interests the Board has recognized as outweighing a member's Section 7 rights is "speaking with one voice, through trusted representatives, in dealing with the [e]mployer about . . . terms and conditions of employment."[28] A union likewise has a significant interest in "'not seeing its strength dissipated and its stature denigrated by subgroups within the unit separately pursuing what they see as separate interests.'"[29] Such actions operate to usurp the union's role as exclusive bargaining representative and undermine its effectiveness in representing the unit employees. Discipline that enables a union to "polic[e] its internal affairs" so that it can control its own processes, properly represent unit employees, and avoid erosion of its status also has been found to outweigh an employee's Section 7 right to question the adequacy of the union's representation or redirect the union's strategy for dealing with the employer.[30]

By contrast, the Board has held that a union unlawfully disciplined a member whose Facebook posts criticized union leadership for improperly giving journeyman status to a political candidate and "raised issues concerning the efficacy and fairness of the [union's] operations and procedures," because the member's "Section 7 right to press the union to change its policies . . . affecting members' employment opportunities[] outweighs the [union's] vague claim that its reputation was damaged" by the posts.[31] Also, a union's interest in promoting solidarity cannot permit it to discipline members for complying with express terms of a collective-bargaining agreement, because such permission would "provide incentive for unions to violate

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[27] *Id.* at 1122.

[28] *Id.*

[29] *Id.* at 1123 (quoting *Emporium Capwell Co. v. W. Addition Cmty. Org.*, 420 U.S. 50, 70 (1975)). *See also Operating Engineers Local 513*, 355 NLRB 145, 150 (2010) ("a union has a legitimate interest in promoting harmony within its ranks"), *enforcement denied on other grounds*, 635 F.3d 1233 (D.C. Cir. 2011).

[30] *Steelworkers Local 9292*, 336 NLRB at 55 (union lawfully disciplined member who challenged union's handling of grievance process); *Service Employees Local 254*, 332 NLRB at 1122-24 (same).

[31] *Laborers Local 91 (Council of Utility Contractors)*, 365 NLRB No. 28, slip op. at 1-2 (2017).

collective-bargaining agreements—a result that runs counter to the basic policy of the Act."[32]

## B. Local 10 Did Not Violate Section 8(b)(1)(A) by Maintaining Article XXIV, Section 1(i) as an Internal Union Rule

Applying the analytical framework set out in *Scofield*, Article XXIV, Section 1(i) reflects a legitimate union interest because the type of communications it forbids could erode Local 10's status as the unit employees' exclusive bargaining representative by undermining internal solidarity and could harm Local 10's standing with employers.[33] The rule safeguards Local 10's ability to "speak[] with one voice" by enabling it to determine for itself what and how to communicate with an employer.[34] It likewise serves Local 10's interest in "not seeing . . . its stature denigrated" by the public airing of internal matters.[35] The rule also allows Local 10 to "polic[e] its internal affairs" without interference from outside actors like employers and rival unions that might have an interest in gaining a competitive advantage or exploiting internal discontent.[36]

At the same time, Article XXIV, Section 1(i) does not impair an "overriding policy" imbedded in the labor laws.[37] If there is no overriding policy favoring a unit employee circumventing his or her union and independently raising a work-related

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[32] *Teamsters Local 896*, 339 NLRB at 769-70.

[33] *See, e.g., Teamsters Local 741*, 314 NLRB at 1109 (union rules requiring members not to harm fellow members based on "selfish motives" and not to interfere with how elected union officers performed their representational duties served legitimate interest of preventing erosion of the union's status as the unit employees' bargaining representative).

[34] *Service Employees Local 254*, 332 NLRB at 1122 (union did not violate Section 8(b)(1)(A) by removing dissident shop steward from his post because union is entitled to have loyalty from individuals in such positions so it can administer the contract and serve its representational function).

[35] *Id.* at 1122-23.

[36] *Steelworkers Local 9292*, 336 NLRB at 55.

[37] *Scofield*, 394 U.S. at 429.

complaint with an employer,[38] then there is similarly no overriding policy for a unit employee to present an internal union matter to an employer.[39] The rule does not interfere with a member's Section 7 right to question the adequacy of Local 10's representation with fellow members or persuade Local 10 officials to change their current policies.[40] Nor does the rule place a barrier on a member's ability to access Board processes for purposes of filing a duty-of-fair-representation charge or avoid application of the rule by resigning his Union membership. And it does not conflict with the terms of the collective-bargaining agreement, which says nothing about employees reporting Union business to an employer. Members can comply with the rule without running afoul of their contractual obligations. In short, because the rule serves a legitimate Union interest and does not impair labor policy, it is not unlawful on its face.

Finally, to the extent that *Sandia* applies to assessing the facial validity of an internal union rule, the rule here does not fall within one of the four exceptions for finding a Section 8(b)(1)(A) violation.[41] As noted above, the rule does not on its face impair access to Board processes or a policy imbedded in the labor laws, and it obviously does not condone violence toward an offender. The rule also does not include language impacting the employment relationship. It does not specify any particular sanction for a violation, and thus does not require "external" forms of

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[38] *Teamsters Local 741*, 314 NLRB at 1109 & n.11 (rejecting ALJ's finding that Section 9(a)'s reference to represented employees' ability to present grievances to an employer was an "overriding labor policy"; unit employee had circumvented his union and requested, contrary to shop steward's wishes, that employer rebid unit work).

[39] *See, e.g., Service Employees Local 254*, 332 NLRB at 1123 (". . . the Section 7 rights at issue [which involved a shop steward questioning the adequacy of his union's handling of a grievance] are qualified and limited by the principle of exclusive representation expressed in Section 9(a) of the Act.").

[40] *See, e.g., Steelworkers Local 9292*, 336 NLRB at 54 & n.6; *Service Employees Local 254*, 332 NLRB at 1122 & n.13.

[41] *Cf. Teamsters Local 896*, 339 NLRB at 769 (applying *Scofield* and *Sandia* to find union had violated Section 8(b)(1)(A) by posting notices on union bulletin board at employer's facility threatening internal discipline for reporting union members to management; the notices violated Section 7 rights because, among other reasons, the contract required unit employees to report safety violations).

enforcement like discharge or suspension from employment. It does not expressly target members' interests as employees; rather, it limits all discussion of Local 10's internal business. Nor does the rule silence dissident voices who disagree with how Local 10 represents them; it does not prevent members from speaking to each other or with non-member coworkers about Local 10 or its bargaining positions, or raising those complaints to Union leadership—the situation in which the Board has viewed discipline for such criticism to impact the employment relationship.[42] It also does not proscribe discussion with employers or other unions on topics other than internal Union business.

Because Article XXIV, Section 1(i) does not violate any of the principles identified in *Scofield* or *Sandia*, it does not, on its face, violate Section 8(b)(1)(A).[43]

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[42] *See, e.g.*, *Hilde Construction*, 225 NLRB at 600-01 (finding union unlawfully fined unit members for holding meeting with fellow unit members on whether to redirect union's bargaining strategy); *see also Sandia*, 331 NLRB at 1424-25 (explaining why the discipline in *Hilde* impacted the employment relationship).

[43] In his dissent in *IATSE Local 151*, then-Member Miscimarra in assessing the facial validity of a union rule dealing with members' ability to bring Board charges analogized to employer rules on the same topic that the Board had found unlawful. 364 NLRB No. 89, slip op. at 9-10; *see also Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311, 311 (1983) (applying similar analogy). The majority disagreed with his analogy, stating that "the Board does not treat a union rule in the same manner as a unilaterally implemented employer workplace rule." *IATSE Local 151,* 364 NLRB No. 89, slip op. at 4-5. The scope of Section 8(b)(1)(A)'s prohibition is not the same as Section 8(a)(1)'s prohibition on employer conduct that "interfere[s] with, restrain[s], or coerce[s] employees in the exercise of" Section 7 rights. Moreover, unlike an employee who is bound to an employer's rule if he wishes to remain employed, a union member is free to resign his membership and thus escape a union rule without jeopardizing his employment. In any event, Member Miscimarra applied the analogy after finding that the particular union rule at issue impaired a policy imbedded in the Act, and thus fell within the scope of Section 8(b)(1)(A) under the *Scofield* framework. *Id.*, slip op. at 9. He did not suggest that the Board should analogize to overbroad-work-rule precedent in every union-rule case, a position that would be inconsistent with extant Board law.

## C. Local 10's Application of Article XXIV, Section 1(i) to the Charging Party Violated Section 8(b)(1)(A)

The threshold question for the as-applied challenge is whether Local 10's discipline of the Charging Party falls within one of the four *Sandia* exceptions to permissible internal union discipline. If not, the matter is purely internal to Local 10 and Section 8(b)(1)(A) is not implicated. Here, we conclude that it falls within the first factor, specifically, that it impacted the employment relationship.[44] Completing the apprenticeship program would have burnished the Charging Party's credentials and enhanced (b) (6), (b) current and long-term employment prospects. Expulsion from the program deprived (b) (6), (b) (7)( of that opportunity. In that sense, the impact of the Charging Party's discipline was not wholly internal and affected (b) (6), (b employment.[45]

Having concluded that Local 10's discipline was not wholly internal, we next balance "the employees' Section 7 rights against the legitimacy of the union interest at stake in the particular case" to determine whether Local 10's enforcement of the rule violated Section 8(b)(1)(A).[46] We conclude that the Charging Party's Section 7 interests in the conduct for which (b) (6), (b was expelled outweighed Local 10's interest in

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[44] *See, e.g., Plasterers Local 121 (Associated General Contractors of Lafayette)*, 264 NLRB 192, 192-93, 197 (1982) (union violated Section 8(b)(1)(A) by discriminatorily terminating the apprenticeship of and refusing to dispatch a member because he criticized union leadership).

[45] The discipline did not fall within the other three *Sandia* exceptions. It clearly did not impair the Charging Party's access to the Board's processes or involve a threat or act of physical violence. The discipline also did not impair a policy imbedded in the Act. The Act places little value on an individual unit employee circumventing (b) (6), (b union and presenting a workplace grievance directly to an employer where it could undermine the union's status, and thus, the parties' collective-bargaining relationship. *See Teamsters Local 741*, 314 NLRB at 1109 & n.11. The discipline also did not undermine the Act's purpose of promoting the collective-bargaining process by punishing an employee for complying with the terms of a contract. *See, e.g., Teamsters Local 896*, 339 NLRB at 769-70. Nothing in the parties' contract required the Charging Party to report perceived misconduct by the Union in operating the apprenticeship program.

[46] *Service Employees Local 254*, 332 NLRB at 1122; *see also Steelworkers Local 9292*, 336 NLRB at 54 & n.5.

preventing that conduct. Local 10 disciplined the Charging Party for communicating about apprentice wages—core Section 7 activity.[47] Moreover, (b) (6), (b was criticizing the Union's handling of that term and condition of employment, a complaint (b) (6), (b had shared with other apprentices, and through (b) (6), (b) actions was attempting to pressure the Union to change its apprentice-classification policy.[48] Like the union member in *Laborers Local 91*, whose Section 7 interest in criticizing union leadership for misclassifying someone as a journeyman outweighed the union's interest in its reputation, the Charging Party "raised issues concerning the efficacy and fairness of the [Local 10's] operations and procedures."[49] Even though Local 10 has discretion to recommend different wage rates for apprentices based on their experience and skill, that role does not lessen the Charging Party's significant Section 7 interest to press Local 10's leaders to change how they operate the apprenticeship program, especially on the subject of compensation, which is a fundamental part of every employment relationship. Finally, although the Charging Party remained free under the rule to raise the issue with coworkers or Union officials, an employee's Section 7 interests are not diminished simply because (b) (6), (b) has other means of exercising his Section 7 rights.[50]

By comparison, the Union's interest in insulating itself from criticism over how it operates the apprenticeship program is relatively weak. Although the Union has an interest in managing its own apprenticeship program, the wages paid to apprentices

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[47] *See, e.g., Whittaker Corp.*, 289 NLRB 933, 933-34 (1988). Because the Charging Party was not attempting to *bargain* about wages, his actions do not fall outside the protection of Section 7 under *Emporium Capwell*. In that case, union-represented employees who attempted to bargain directly with their employer were not engaged in protected activity under Section 7. 420 U.S. at 52.

[48] *Service Employees Local 254*, 332 NLRB at 1122 (describing employee's "Section 7 right to question the adequacy of his Union's representation of the bargaining unit and to seek to redirect his Union's policies and strategies").

[49] *Laborers Local 91*, 365 NLRB No. 28, slip op. at 1-2 (union member's Section 7 interest in criticizing union leadership for improperly making political candidate a journeyman, which affected members' employment opportunities, outweighed union's "vague claim that its reputation was damaged").

[50] *Cf. Serendippity-Un-Ltd.*, 263 NLRB 768, 775 (1982) (employees have the right "to engage in concerted activity which they decide is appropriate," even if "alternative methods of solving the problems" are available (internal quotations omitted)).

are not solely a matter of internal operations—they clearly impact employees and the Employer in addition to the Union. Moreover, the Charging Party was not attempting to bargain with the Employer about wages, so the Union has minimal grounds for concern that (b) (6), (b) (7) conduct would usurp its role as the employees' exclusive representative. Under the circumstances, although the Charging Party's conduct may have somewhat damaged the Union's reputation, it did not significantly damage its ability to represent the bargaining unit, and any damage to reputation is outweighed by the Charging Party's Section 7 right to collectively question both (b) (6), (b) (7) wages and the fairness of the Union's employment-related procedures.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union's application of Article XXIV, Section 1(i) to the Charging Party violated Section 8(b)(1)(A).

**D.** (b) (5)

(b) (5)

[51] (b) (5)

[52] (b) (5)

[3] (b) (5)

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[51] (b) (5)

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/s/
J.L.S.

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