

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

DATE: April 17, 2018

TO: Ronald K. Hooks, Regional Director
Region 19

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

SUBJECT: International Association of Bridge, Structural, 536-2581-3335-0000
Ornamental & Reinforcing Iron Workers, 536-5075
Local 29, AFL-CIO 536-5075-5033-0000
Case 19-CB-200399 536-5075-5050-0000
536-5075-5098-0000
712-2500
712-5000
712-5042-0100-0000
712-5042-3390-0000
712-5042-6783-7200

The Region submitted this case for advice as to whether: 1) a joint apprenticeship training committee (“JATC”) is an agent of Ironworkers Local 29 (hereinafter “the Union”), and 2) the Union is therefore responsible for alleged unfair labor practices committed by JATC officials in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act. We conclude initially that the JATC is the Union’s agent because its actions toward the Charging Party were carried out by JATC officials who had either actual or apparent authority to act on the Union’s behalf to ensure that apprentices supported the Union. We also conclude that the Union, through its agent the JATC, violated Section 8(b)(1)(A) and/or 8(b)(2) by: (1) condoning and threatening acts of violence against the Charging Party, a former apprentice, in an effort to restrain and coerce (b) (6), (b) (7)(C) in the exercise of (b) (6), (b) (7)(C) Section 7 right to refrain from supporting the Union, (2) constructively removing the Charging Party from the apprenticeship program based on those threats and acts of violence, (3) insulting and throwing the Charging Party out of an apprenticeship class, and (4) providing the Charging Party outdated textbooks for use in the apprenticeship program. Accordingly, the Region should issue complaint, absent settlement.

FACTS

Since (b) (6), (b) (7)(C) the Charging Party had been attempting to join the Union. In (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) on the same day that Instafab, a nonunion company that the Union had been attempting to organize, hired (b) (6), (b) (7)(C), the JATC (b) (6), (b) (7)(C) contacted the Charging

Party and informed (b) (6), (b) (7) that there was a way for (b) (6), (b) (7) to join. At that time, the JATC (b) (6), (b) (7)(C) also served as (b) (6), (b) (7)(C). The JATC (b) (6), (b) (7)(C) took the Charging Party to the Union hall to meet with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) who informed the Charging Party that if (b) (6), (b) (7) documented Instafab's worker and provided that information to the Union, the Charging Party would be allowed to join the Union and the apprenticeship program. After (b) (6), (b) (7) refused to engage in the various activities that (b) (6), (b) (7)(C) had asked of (b) (6), (b) (7) to show (b) (6), (b) (7) support for the Union, the Charging Party was not invited to join the Union or the apprenticeship program.

Between late 2015 and late 2016, the Charging Party developed a reputation among the rank-and-file Union members as (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). In November or December 2016, the Charging Party returned to the Union hall after a year of having no contact with the Union and again spoke with the JATC (b) (6), (b) (7)(C) about entering the apprenticeship program. The Charging Party was still employed at Instafab, but was no longer providing the Union any information. The JATC (b) (6), (b) (7)(C) who was no longer (b) (6), (b) (7)(C) told the Charging Party that (b) (6), (b) (7) had to run things by (b) (6), (b) (7)(C) who was now (b) (6), (b) (7)(C) with Ironworkers Pacific Northwest District Council.¹

Around December 10, 2016, the Charging Party went to the Union hall to submit (b) (6), (b) (7) application for the apprenticeship program and spoke with the JATC (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), who was also (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) of the JATC.² The (b) (6), (b) (7)(C) stated that the JATC would have to vote on (b) (6), (b) (7) application because of the Charging Party's history of conflict with the Union and "being a cheerleader" for nonunion Instafab.

On December 12, 2016, the day before the JATC voted, the (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C) went to the Charging Party's house to make sure there was no bad blood. Both the (b) (6), (b) (7)(C) again asked the Charging Party to strike Instafab. The (b) (6), (b) (7)(C) stated that if the

¹ The Union is an affiliated local of the District Council.

² The JATC is a jointly administered program established in the collective-bargaining agreement between the District Council and the Northwest Iron Workers Employers' Association, a multi-employer association of construction industry firms. The JATC is managed by a six-person committee, and three committee members are appointed by the Union and three by the multi-employer association. The JATC coordinator implements the decisions of the six-member committee.

Charging Party did so, [REDACTED] could be admitted into the Union as (b) (6), (b) (7)(C) and not have to do rebar work. The Charging Party declined, but the (b) (6), (b) (7)(C) [REDACTED] said that whether the Charging Party “got in” was up to (b) (6), (b) (7)(C) [REDACTED] who would take care of the Charging Party. (b) (6), (b) (7)(C) [REDACTED], the JATC voted to admit the Charging Party into the apprenticeship program. Shortly thereafter, the Charging Party went to the Union hall, joined the Union, and paid (b) (6), (b) (7)(C) [REDACTED] initial dues.

The apprenticeship program includes on-the-job training and classroom instruction. Beginning in December 2016, the Union dispatched the Charging Party as an apprentice to several jobs. In May 2017,³ after being laid off from a job to which the Union had referred (b) (6), (b) (7)(C) [REDACTED], the Charging Party began attending apprenticeship classes full-time. These classes were taught by a JATC instructor who was also a Union member.⁴ The Charging Party complained to the instructor that although (b) (6), (b) (7)(C) [REDACTED] had paid for new textbooks, the JATC had provided (b) (6), (b) (7)(C) [REDACTED] with used, outdated books that had missing blueprints and pages for use during in-class instruction and open-book examinations. On the second occasion when (b) (6), (b) (7)(C) [REDACTED] complained to the JATC instructor about (b) (6), (b) (7)(C) [REDACTED] books, the instructor stated they were ratty books for a “rat” like (b) (6), (b) (7)(C) [REDACTED]. The Charging Party also complained to the JATC (b) (6), (b) (7)(C) [REDACTED] and the Union (b) (6), (b) (7)(C) [REDACTED] about receiving used, outdated books.⁵ Although those individuals promised (b) (6), (b) (7)(C) [REDACTED] would receive new books when they arrived, (b) (6), (b) (7)(C) [REDACTED] never received new books.

On May 18, the Charging Party complained to the JATC (b) (6), (b) (7)(C) [REDACTED] during a rebar training class that the (b) (6), (b) (7)(C) [REDACTED] was disparately creating an unsafe working condition for (b) (6), (b) (7)(C) [REDACTED] by telling the apprentice carrying rebar behind (b) (6), (b) (7)(C) [REDACTED] to walk very fast. The JATC (b) (6), (b) (7)(C) [REDACTED] insulted (b) (6), (b) (7)(C) [REDACTED] said (b) (6), (b) (7)(C) [REDACTED] was kicked out of the Union, and threw (b) (6), (b) (7)(C) [REDACTED] out of class. After the Charging Party contacted the (b) (6), (b) (7)(C) [REDACTED] (b) (6), (b) (7)(C) [REDACTED], who then contacted the Union (b) (6), (b) (7)(C) [REDACTED] at the Union hall, the latter took the Charging Party back into the classroom and lectured everyone that

³ All dates hereinafter in 2017 unless otherwise noted.

⁴ The classes took place in the Union hall. The JATC instructor is not, and has never been, a Union official.

⁵ The Union (b) (6), (b) (7)(C) [REDACTED] is also one of four Union-appointed trustees on the Pacific Northwest Iron Workers and Employers Apprenticeship and Training Trust Fund. This trust fund is an entity separate from the JATC that approves and provides all funding for the apprenticeship program. The multi-employer association also appoints four trustees to jointly administer the trust fund with the Union.

they were not supposed to pick on people because of their non-Union past, but were to help each other learn the trade.

During class on June 1, an apprentice, who was also (b) (6), (b) (7)(C) called the Charging Party a bitch and told (b) (6), (b) (7)(C) to clean the bathroom.⁶ When the Charging Party stood up for (b) (6), (b) (7)(C) the (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) a “rat,” took off (b) (6), (b) (7)(C) shirt, and threatened to “beat (b) (6), (b) (7)(C) ass” in front of the JATC (b) (6), (b) (7)(C) and the rest of the class. Other apprentices separated them, but the JATC (b) (6), (b) (7)(C) did not intervene.

Also during a class on June 1, the JATC (b) (6), (b) (7)(C) said that attendance at the Union meeting that evening was mandatory. Later that same day, the Charging Party informed the JATC (b) (6), (b) (7)(C) by text message that (b) (6), (b) (7)(C) would not be able to attend that mandatory Union meeting due to a family emergency. The JATC (b) (6), (b) (7)(C) whose oral statements were soon affirmed by a text message from the JATC (b) (6), (b) (7)(C) told the Charging Party that missing the meeting would result in additional days of make-up work. The Charging Party drove to a bar near the Union hall where members met before the meeting looking to discuss the discipline with the JATC (b) (6), (b) (7)(C). When the Charging Party pulled up to the bar, (b) (6), (b) (7)(C) saw the JATC (b) (6), (b) (7)(C) and several apprentices and Union members outside. The JATC (b) (6), (b) (7)(C) began screaming at the Charging Party, claimed that the Charging Party did not have time for the Union and was a piece of shit and a “rat,” and that if it was up to (b) (6), (b) (7)(C) would kick the Charging Party out of the Union. The Charging Party got out of (b) (6), (b) (7)(C) vehicle and asked why (b) (6), (b) (7)(C) was being cursed at in front of (b) (6), (b) (7)(C) who were in the vehicle. Another apprentice then punched (b) (6), (b) (7)(C) in the face.⁷ After the altercation was broken up, in part by the Charging Party’s (b) (6), (b) (7)(C) the JATC (b) (6), (b) (7)(C) and several apprentices warned the Charging Party that if (b) (6), (b) (7)(C) showed up again, they would “jump” (b) (6), (b) (7)(C).

The Charging Party did not return to the Union hall, but did not formally resign from the Union. On (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) filed the initial charge against the Union, alleging that the Union had violated Section 8(b)(1)(A) and 8(b)(2) by, among other things, promoting violence against (b) (6), (b) (7)(C) and removing (b) (6), (b) (7)(C) from the apprenticeship program. On July 11, the JATC voted to remove the Charging Party from the apprenticeship

⁶ This directive to clean the bathroom referred to discipline imposed by the JATC (b) (6), (b) (7)(C) on the Charging Party for alleged tardiness several days earlier. The Charging Party had not been present when class started, and so the (b) (6), (b) (7)(C) charged (b) (6), (b) (7)(C) a day of “make-up work” at the Union hall where the apprenticeship classes were held. This involved performing unpaid maintenance work.

⁷ This apprentice has not been identified.

program after (b) (6), (b) failed to appear at a JATC meeting to consider (b) (6), (b) continued enrollment. The Charging Party previously had informed the JATC that (b) (6), (b) would not attend because of the pending Board charge and because (b) (6), (b) feared for (b) (6), (b) physical safety.

ACTION

We conclude initially that the JATC is the Union's agent because its actions toward the Charging Party were carried out by JATC officials who had either actual or apparent authority to act on the Union's behalf to ensure that apprentices supported the Union. We also conclude that the Union, through its agent the JATC, violated Section 8(b)(1)(A) and/or 8(b)(2) by: (1) condoning and threatening acts of violence against the Charging Party in an effort to restrain and coerce (b) (6), (b) in the exercise of (b) (6), (b) Section 7 right to refrain from supporting the Union, (2) constructively removing the Charging Party from the apprenticeship program based on those threats and acts of violence, (3) insulting and throwing the Charging Party out of an apprenticeship class, and (4) providing the Charging Party outdated textbooks for use in the apprenticeship program.⁸

I. The JATC is the Union's Agent.

In *Electrical Workers Local 429*, the Board held that the conduct of a joint apprenticeship training committee "can be attributed directly to a union in at least three situations: (1) when provisions of a collective-bargaining agreement impinge on the trustees' duty to administer the funds solely for the benefit of the employees; (2) when the trustees' actions are in fact directed by union officials; or (3) when the trustees' acts are undertaken in their capacities as union officials rather than as trustees."⁹ In that case, the Board held that a joint apprenticeship training committee's actions against an apprentice fell within the second and third categories

⁸ The Charging Party also alleged that the Union, through the JATC, violated Section 8(b)(1)(A) by threatening to discipline (b) (6), (b) (7) with a day of make-up work after (b) (6), (b) stated (b) (6), (b) would not attend a mandatory Union meeting. Given that the Board generally permits unions to discipline members for not following internal union rules where there is neither an impact on the employment relationship nor the use of unacceptable methods of coercion, we would not allege a violation based on this threat of internal discipline. See *Office Employees Local 251 (Sandia Nat'l Labs.)*, 331 NLRB 1417, 1424 (2000).

⁹ *Electrical Workers Local 429*, 357 NLRB 332, 334 (2011).

and, therefore, were attributable to the respondent-union.¹⁰ The Board reasoned that the training committee's actions against the apprentice were initiated and carried out by committee officials who were also union agents and acted in furtherance of that role. Specifically, the case focused on the conduct of the training committee's training director, who was not a union official, and two union-appointed committee members, who simultaneously served as union officials. The respondent-union had made the training director its special agent for collecting dues from apprentices. He scheduled a special meeting of the training committee to recommend that an apprentice be rotated out of his current job because of his union-dues delinquency. The two union-appointed committee members then voted to rotate the apprentice explicitly because of his dues delinquency and opposition to the union.¹¹ The actions of the training director and two committee members showed that they were acting in furtherance of their roles as union agents by serving the exclusively union interests of dues collection and member support, which were not related to any legitimate interest of the training committee as an independent entity.¹² The Board held that the union "in fact" exercised control over the joint apprenticeship training committee because its actions were either directed by union agents, or undertaken by committee members in their capacities as union officials.¹³

¹⁰ *Id.*

¹¹ This vote also included a third committee member, who had been appointed by the employer association that had established the training committee with the union as part of their collective-bargaining relationship. He voted with the two union-appointed members and said "it's about dues." *Id.* at 333. After the training committee voted to rotate the apprentice from his current job, the apprentice stated that he would resign his union membership. The training committee then rescinded the rotation decision, but disciplined him by delaying his promotion to the next salary level and completion of the training program for six months. *Id.*

¹² *Id.* at 334.

¹³ *Id.* See also *Service Employees Local 1-J (Shor Co.)*, 273 NLRB 929, 931 & n.9 (1984) (finding health and welfare fund to be union's agent where union president also served as the fund's administrator and threatened to and suspended an employee's benefits because she had filed a decertification petition; because the union president-administrator acted in his capacity as a union official when administering the fund to further only union interests, the union exercised control over the fund, which was therefore its agent).

Applying that analytical framework, we conclude that the facts here also establish that the JATC's actions against the Charging Party are attributable to the Union under the second and third categories set out in *Electrical Workers Local 429*. Specifically, the JATC (b) (6), (b) (7)(C), the (b) (6), (b) (7)(C) and the JATC (b) (6), (b) (7)(C) each had actual or apparent authority to act on behalf of the Union to ensure that apprentices supported the Union. The actions these individuals as JATC officials took toward the Charging Party showed that they were acting in furtherance of their roles as Union agents. Thus, the Union is liable because, by the conduct of its agents, the JATC's actions were in fact directed by the Union or undertaken based on a committee member acting in (b) (6), (b) (7)(C) capacity as (b) (6), (b) (7)(C).

Regarding the JATC (b) (6), (b) (7)(C) the facts establish that (b) (6), (b) (7)(C) initially had actual authority, as a Union official, and then apparent authority to ensure that apprentices supported the Union. Thus, in August 2015, while still a member of the Union's (b) (6), (b) (7)(C) with actual authority to act on its behalf, the JATC (b) (6), (b) (7)(C) contacted the Charging Party about joining the Union on the same day the latter was hired by Instafab, a nonunion company that the Union had been attempting to organize.¹⁴ The JATC (b) (6), (b) (7)(C) then took the Charging Party to the Union hall to meet with the (b) (6), (b) (7)(C), who stated that if the Charging Party documented Instafab's worker abuses and provided that information to the Union, the (b) (6), (b) (7)(C) would ensure (b) (6), (b) (7)(C) entry into the Union and the apprenticeship program. Based on those events, the JATC (b) (6), (b) (7)(C) clearly conveyed to the Charging Party that (b) (6), (b) (7)(C) would follow the Union's interests when performing (b) (6), (b) (7)(C) duties for the apprenticeship program.¹⁵ The (b) (6), (b) (7)(C) independently reinforced that message by telling the Charging Party that (b) (6), (b) (7)(C) would be allowed to join the apprenticeship program if (b) (6), (b) (7)(C) supported the Union's campaign against non-Union Instafab. The statements of the JATC (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C) had nothing to do with the JATC's interest in admitting a suitable candidate for the apprenticeship program, but rather served the Union's interest in organizing Instafab.¹⁶

¹⁴ See, e.g., *Tyson Fresh Meats*, 343 NLRB 1335, 1336-37 (2004) (finding union stewards were union agents because they had both actual and apparent authority to represent the union); Restatement (Third) of Agency § 2.01 ("An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.").

¹⁵ See *Plumbers Local 66 (Tri-State Mechanical)*, 287 NLRB 583, 585 n.2 (1987) (where local union's business manager was also representative for benefit funds, his actions to accomplish local's objectives showed he was working as the local's agent).

The JATC (b) (6), (b) (7)(C) continued to demonstrate that (b) (6), (b) (7)(C) would serve the Union's interests when the Charging Party returned in late 2016.¹⁷ At that time, the Charging Party returned to the Union hall after not having contacted the Union for about a year and asked the JATC (b) (6), (b) (7)(C) about entering the apprenticeship program. The JATC (b) (6), (b) (7)(C) who was no longer a (b) (6), (b) (7)(C) told the Charging Party that (b) (6), (b) (7)(C) would get back to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) had to run things by the (b) (6), (b) (7)(C) who was now (b) (6), (b) (7)(C) with the District Council. This statement by the JATC (b) (6), (b) (7)(C) informed the Charging Party that the (b) (6), (b) (7)(C) continued to perform (b) (6), (b) (7)(C) functions for the JATC based on furthering Union interests, specifically ensuring that a now higher-ranking District Council official is appeased as well as the interest in ensuring pro-Union apprentices. Around December 10, when the Charging Party went to the Union hall to submit (b) (6), (b) (7)(C) application, (b) (6), (b) (7)(C) spoke with the JATC (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C), who is also (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) of the JATC. The (b) (6), (b) (7)(C) stated that the JATC would have to vote on (b) (6), (b) (7)(C) application because of the Charging Party's history of conflict with the Union and "being a cheerleader" for nonunion Instafab. This statement by the (b) (6), (b) (7)(C) evidenced two points: first, that the JATC (b) (6), (b) (7)(C) now had apparent authority to act on behalf of the Union to ensure apprentice support¹⁸ and, second, that the (b) (6), (b) (7)(C) would act in (b) (6), (b) (7)(C) capacity as a Union official in performing (b) (6), (b) (7)(C) duties for the JATC.

¹⁶ On (b) (6), (b) (7)(C) 2017, the Charging Party filed the initial charge in this case, which means that the Section 10(b) period began on (b) (6), (b) (7)(C) 2016. *See Carney Hospital*, 350 NLRB 627, 630 (2007) (setting forth test for when allegations in untimely, amended charge are "closely related" to those in a timely charge). Although the conduct discussed above occurred outside the Section 10(b) period, it can be used to shed light on the agency relationship and alleged unfair labor practices. *See Machinists Local Lodge No. 1424 v. NLRB (Bryan Mfg. Co.)*, 362 U.S. 411, 416-17 (1960).

¹⁷ The interaction contained in this paragraph likely occurred outside the 10(b) period, but as stated in note 16, *supra*, it can be used to shed light on the agency relationship and the alleged unfair labor practices.

¹⁸ *See, e.g., Bio-Med. of Puerto Rico*, 269 NLRB 827, 828 (1984) (finding apparent authority where union "held out" two employees of in-plant organizing committee as acting on its behalf by, among other things, failing to disassociate itself from the results of the employees' actions); *Allegany Aggregates*, 311 NLRB 1165, 1165-66 (1993) (finding employer actions created "reasonable basis" for employees to believe a worker was authorized to act on employer's behalf and therefore created apparent authority); *Great American Products*, 312 NLRB 962, 963 (1993) (holding that

The (b) (6), (b) (7)(C) soon reinforced that (b) (6), (b) (7)(C) was acting in (b) (6), (b) (7)(C) capacity as a Union official rather than a JATC committee member. On December 12, before the JATC voted on whether to admit the Charging Party to the apprenticeship program, the (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C) went to the Charging Party's house to make sure there was no bad blood. Both persons again asked the Charging Party to strike Instafab, which was still subject to the Union's organizing campaign. The (b) (6), (b) (7)(C) and now (b) (6), (b) (7)(C) stated that if the Charging Party did so, (b) (6), (b) (7)(C) could be admitted into the Union as a journeyman and not have to do rebar work. The Charging Party declined, but the (b) (6), (b) (7)(C) said that whether the Charging Party "got in" was up to (b) (6), (b) (7)(C), who would take care of the Charging Party. These facts establish that the (b) (6), (b) (7)(C) conveyed to the Charging Party that (b) (6), (b) (7)(C) would serve Union in (b) (6), (b) (7)(C) g out (b) (6), (b) (7)(C) duties with the JATC.¹⁹ This was abundantly clear based on (b) (6), (b) (7)(C) effort to address the Charging Party's perceived antipathy toward the Union and failure to support the Union's campaign against Instafab before being admitted to the apprenticeship program, none of which involved the JATC's sole interest in producing skilled ironworkers.²⁰

In light of the statements and conduct of the JATC (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C), these Union agents established that the JATC as an organization acted on behalf of the Union to ensure apprentice support for the Union. Indeed, the JATC (b) (6), (b) (7)(C) also conveyed to the Charging Party that (b) (6), (b) (7)(C) was acting consistent with the JATC's authority on behalf of the Union. (b) (6), (b) (7)(C) repeatedly referred to the Charging Party as a "rat" who should be kicked out of the Union.²¹ During the June 1

employees' reasonable belief that worker was reflecting company policy and acting for management was sufficient to create apparent authority); *Electrical Workers Local 45*, 345 NLRB 7, 7 (2005) (finding union steward had apparent authority to act on behalf of the union where he co-lead union meetings and union business representative deferred to steward at meeting during which steward unlawfully threatened employee with termination for filing a decertification petition).

¹⁹ See note 15, *supra*.

²⁰ See *Electrical Workers Local 429*, 357 NLRB at 334 (finding two union-appointed committee members acted in their capacity as union officials, rather than JATC officials, when they voted to rotate apprentice out of his current job because of his union dues delinquency; that motive was irrelevant to the training of apprentices).

²¹ It is well-established that the term "rat" refers to a worker who does not support a union. See, e.g., *Marquis Elevator Co.*, 217 NLRB 461, 461 n.2 (1975) (finding the

classroom incident, the JATC (b) (6), (b) (7)(C) condoned the (b) (6), (b) (7)(C) threat of violence toward the Charging Party. That evening, just before another apprentice assaulted the Charging Party, the JATC (b) (6), (b) (7)(C) told the Charging Party, in the presence of other apprentices and Union members, that (b) (6), (b) (7)(C) would have kicked the Charging Party out of the Union multiple times and that the Charging Party was a “rat.” Because the JATC (b) (6), (b) (7)(C) reflected the policy of other Union agents in JATC roles and of the JATC as a whole, the Charging Party reasonably believed that the JATC (b) (6), (b) (7)(C) had apparent authority on behalf of the Union to ensure apprentices supported it.²²

As the preceding shows, the Union actually exercised control over the JATC because its agents were those directing the JATC’s actions toward the Charging Party. In exercising their authority as JATC officials, the JATC (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and JATC (b) (6), (b) (7)(C) all sought to serve a Union-only interest in dealing with an apprentice who continued to demonstrate antipathy toward the Union. Thus, the JATC acted as the Union’s agent when it retaliated against the Charging Party for not supporting the Union.²³

II. Analysis of the Alleged Unfair Labor Practices.

We conclude that the Union, through its agent the JATC, violated Section 8(b)(1)(A) by condoning and threatening acts of violence against the Charging Party that occurred on June 1, in an effort to restrain and coerce (b) (6), (b) (7) in the exercise of (b) (6), (b) (7) Section 7 right to refrain from supporting the Union after (b) (6), (b) (7) joined the Union and entered the apprenticeship program. By that conduct, the Union, through the JATC, also violated Section 8(b)(1)(A) and 8(b)(2) by constructively removing the Charging

term “rat” means to “go nonunion”); *Occidental Chemical Corp.*, 294 NLRB 623, 636 n.24 (1989) (finding that “rat” is a synonym for the word “scab,” which has been defined as a strike replacement or someone who refuses to join a union.); *Geske & Sons, Inc.*, 317 NLRB 28, 55 (1995) (“‘rat’ . . . [is] a pejorative rhetorical term to demonstrate Local 150’s strong disapproval of workers who failed to join Local 150 and an employer that did not recognize it”), *enforced*, 103 F.3d 1366 (7th Cir.), *cert. denied*, 522 U.S. 808 (1997).

²² See, e.g., *Great American Products*, 312 NLRB at 963 (finding employees would reasonably believe that non-supervisory employee was employer’s agent where employer introduced him as supervisor and he acted consistent with anti-union message of employer’s admitted supervisors).

²³ See *Electrical Workers Local 429*, 357 NLRB at 334; *Service Employees Local 1-J (Shor Co.)*, 273 NLRB at 931.

Party from the apprenticeship program. The Union also violated Section 8(b)(1)(A) when the JATC provided the Charging Party used, outdated books for (b) (6), (b) (7) apprenticeship courses and when the JATC (b) (6), (b) (7)(C) insulted and kicked the Charging Party out of class on May 18.

A. The Union, through the JATC, violated Section 8(b)(1)(A) by condoning or threatening acts of violence against the Charging Party.

It is well-established that threats and acts of violence by a union can restrain and coerce employees in the exercise of their Section 7 rights.²⁴ Threats of physical violence “are conducive to an atmosphere receptive of violence. Such an atmosphere is unacceptable when it involves rights protected by the Act. . . .”²⁵ The union has the responsibility of preventing such an atmosphere from taking hold.²⁶ The Board has held that a union’s failure to repudiate threats is effectively condoning them, which equally violates Section 8(b)(1)(A).²⁷

²⁴ See, e.g., *Steelworkers Local 2338 (Stephenson Brick & Tile Co.)*, 129 NLRB 6, 10 (1960) (“ . . . the Board has frequently held that threats of violence are sufficient to constitute a violation of Section 8(b)(1)(A).”); *Iron Workers Local 433*, 228 NLRB 1420, 1420 (1977) (union violated Section 8(b)(1)(A) where its officials threatened, assaulted, or condoned threats against hiring hall applicants for protesting violations of the contractual hiring hall procedures); *Masters, Mates & Pilots (Marine Transport)*, 301 NLRB 526, 527 (1991) (threats of bodily harm against employee “clearly restrained and coerced this employee in the exercise of his Section 7 rights, constituting a violation of Section 8(b)(1)(A)”); *Food & Commercial Workers Local 7R (Longmont Foods)*, 347 NLRB 1016, 1016 (2006) (finding union violated Section 8(b)(1)(A) when organizer told employee that if her coworker, who had complained at prior union meeting about union’s representation of the bargaining unit, showed up at a future meeting, he would “grab her by the hair and take her out”; employee then told coworker to be careful because organizer was very upset).

²⁵ *Operating Engineers Local 450*, 267 NLRB 775, 789 n.57 (1983).

²⁶ *Id.* (“[union’s] responsibility is not to threaten [the charging party], but to take firm and decisive action in preventing an atmosphere receptive to expressions of threats and violence and in extinguishing forthwith the slightest development of such an atmosphere insofar as such relates to members’ activities protected by the Act”).

²⁷ *Communication Workers Local 9431 (Pacific Bell)*, 304 NLRB 446, 446 (1991) (“ . . . we find that by so failing to make any serious effort to prevent or repudiate the

Here, the JATC (b) (6), (b) (7)(C) condoned threats and incidents of violence and actually threatened violence against the Charging Party (b) (6), (b) (7)(C) for the purpose of coercing (b) (6), (b) (7)(C) into supporting the Union or punishing (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) failure to do so. First, during class on June 1, an apprentice, who was also (b) (6), (b) (7)(C) called the Charging Party a bitch, a “rat,” and threatened to “beat (b) (6), (b) (7)(C) ass” in front of the JATC (b) (6), (b) (7)(C) and the rest of the class.²⁸ By failing to take a (b) (6), (b) (7)(C) action to repudiate the threat of violence made against the Charging Party for being an anti-Union “rat,” the JATC (b) (6), (b) (7)(C) condoned the threat of violence and violated Section 8(b)(1)(A).

Second, later that same day, the JATC (b) (6), (b) (7)(C) again condoned threats and threatened the Charging Party for not supporting the Union during the fight at the bar where the Charging Party was physically assaulted in front of the JATC (b) (6), (b) (7)(C), who also threatened to “jump” the Charging Party if (b) (6), (b) (7)(C) returned to the program. It is well settled that violence directed at intra-union activity is an unacceptable method of union coercion that violates Section 8(b)(1)(A).²⁹ Here, the pattern of threats and physical violence was tied directly to the Charging Party’s history at nonunion Instafab and the subsequent perception that (b) (6), (b) (7)(C) was a “rat” who did not support the Union. The JATC (b) (6), (b) (7)(C) conduct toward the Charging Party sought to coerce (b) (6), (b) (7)(C) into refraining from exercising (b) (6), (b) (7)(C) Section 7 right to not support the Union. Accordingly, the Union, through its agent the JATC, violated Section 8(b)(1)(A).

threats . . . the Respondent Union violated Section 8(b)(1)(A)” (citing *East Texas Motor Freight*, 262 NLRB 868, 870-71(1982)); *Mine Workers District 30 (TCH Coal)*, 278 NLRB 309, 316-17 (1986) (“ . . . unions can ratify or condone the actions of picketing members and thereby become responsible for their acts and conduct by failing to take appropriate steps to curb the unlawful acts of their members or by participating, as an entity, in the protest”).

²⁸ As stated in note 21, *supra*, it is well-established that the term “rat” refers to a worker who does not support a union.

²⁹ See *Food & Commercial Workers Local 7R (Longmont Foods)*, 347 NLRB at 1016 (citing *Office Employees Local 251 (Sandia Nat’l Labs.)*, 331 NLRB at 1424).

B. The Union, through the JATC, violated Section 8(b)(1)(A) and 8(b)(2) by constructively removing the Charging Party from the apprenticeship program.

“A constructive discharge is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surround it.”³⁰ A traditional constructive discharge exists where the employee quits because the employer has purposefully made working conditions unbearable and it can be shown that the burden imposed caused, or was intended to cause, a change in working conditions so unpleasant that the employee is forced to resign and the burden was imposed because of protected activity.³¹ For example, in *E. Mishan & Sons*, the employer called a pro-union employee’s mother and threatened that her son was “going to get it” and would “be hurt” if anything happened to the employer due to the union’s organizing drive.³² The employer later informed another pro-union employee that he should speak with his coworker’s mother to find out what he had said to her. The two employees refused to return to work out of fear for their safety.³³ The Board concluded that the employer had created an unbearable situation that forced the employees to quit rather than face potential violence for returning to work.³⁴

Here, on the evening of June 1, the JATC (b) (6), (b) (7)(C) threatened the Charging Party with further physical violence if (b) (6), (b) (7)(C) returned to the apprenticeship program. (b) (6), (b) (7)(C) also condoned the assault and threats of physical violence by other apprentices toward the Charging Party. The facts demonstrate that the reason for the conduct towards the Charging Party was because of (b) (6), (b) (7)(C) perceived anti-Union sentiment and conduct at the non-union employer, as (b) (6), (b) (7)(C) was called a “rat” by the JATC (b) (6), (b) (7)(C) on multiple occasions.³⁵ Furthermore, the JATC (b) (6), (b) (7)(C) had already shown that (b) (6), (b) (7)(C)

³⁰ *Intercon I (Zercom)*, 333 NLRB 223, 223 (2001) (internal quotations omitted).

³¹ *Id.* at 223, n.3 (citing *Grocers Supply Co.*, 294 NLRB 438, 439 (1989), and *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976)); *E. Mishan & Sons, Inc.*, 242 NLRB 1344, 1345 (1979).

³² *Mishan & Sons*, 242 NLRB at 1344.

³³ *Id.* at 1345.

³⁴ *Id.* See also *Kathleen’s Bakeshop, LLC*, 337 NLRB 1081, 1081 n.1, 1090-91 (2002).

³⁵ See note 21, *supra*.

tolerated threats of violence in the classroom and actual acts of violence outside it. Instead of potentially being assaulted again, the Charging Party effectively quit the program by not returning out of concern for [REDACTED] physical safety. Therefore, the Union, through the JATC, constructively removed the Charging Party from the apprenticeship program due to [REDACTED] lack of Union support.

The Union's defense is, in part, that a constructive discharge rationale cannot be applied here because the JATC was not the Charging Party's employer, but only a training program [REDACTED] enrolled in, and [REDACTED] removal from a training program would not have the same effect as a discharge in coercing [REDACTED] Section 7 rights. The Union also asserts that the Charging Party suffered no adverse employment action because completing the apprenticeship program would not have guaranteed [REDACTED] a job, [REDACTED] remains free to place [REDACTED] name on the Union's hiring hall list (and [REDACTED] wage rate on prevailing wage jobs would be higher if [REDACTED] is not dispatched as an apprentice), and the Union's dispatcher repeatedly contacted the Charging Party since [REDACTED] left the apprenticeship program with job referrals, but [REDACTED] has refused them.

The Union's defenses to this allegation miss the point. Regardless of whether the Charging Party was guaranteed a job if [REDACTED] completed the apprenticeship program or remains eligible for referral through the Union's hiring hall, completion of the apprenticeship program and attaining journeyman status would have enhanced [REDACTED] current and long-term employment prospects. The Union's agent used threats of violence while referring to the Charging Party as a "rat" who should have been kicked out of the Union and coerced [REDACTED] into quitting a Union-sponsored training program. The Board has held that a union refusing to assist dissident members in finding work unlawfully restrained and coerced them in violation of Section 8(b)(1)(A) even if they could have found work without the union's help.³⁶ Likewise, it is no less coercive to effectively deny the Charging Party training and career advancement opportunities by creating unbearable conditions in response to [REDACTED] lack of Union support and then argue that there is no violation because [REDACTED] is welcome to apply for work at the Union hall.³⁷ Accordingly, we reject the Union's defense.

³⁶ *Teamsters Local 923 (Yellow Cab Co.)*, 172 NLRB 2137, 2138 (1968) ("It does not follow, however, that a union's discriminatory refusal to assist certain represented employees in their effort to find new jobs lacks coercive impact merely because the employees might have obtained jobs without the [u]nion's assistance").

³⁷ *See id. Cf. SKC Electric, Inc.*, 350 NLRB 857, 859 (2007) (holding that employer violated Section 8(a)(3) and (1) by not selecting employee for training because of his union support).

The constructive removal also violated Section 8(b)(2). In *Electrical Workers Local 429*, the Board held that the union, through the joint apprenticeship training committee, violated both Section 8(b)(1)(A) and 8(b)(2) by delaying the apprentice's advancement to a higher salary level and completion of the program.³⁸ Here, the Union's constructive removal of the Charging Party from the apprenticeship program had the same discriminatory effect as in *Electrical Workers Local 429*. The Charging Party was unable to return to the program to complete [REDACTED] coursework, which has indefinitely delayed [REDACTED] ability to advance to a higher salary and become a journeyman by completing the program. Accordingly, the Union also violated Section 8(b)(2).

C. The Union, through the JATC, violated Section 8(b)(1)(A) based on the May 18 classroom incident.

A union may commit acts of restraint or coercion without engaging in violence or threats of violence. For example, harassment that is non-threatening but interferes with an employee's performance of daily tasks has been held to be unlawful.³⁹ Such conduct violates Section 8(b)(1)(A) where it would reasonably tend to coerce employees in the exercise of their Section 7 rights.⁴⁰

Here, on May 18, after the Charging Party complained to the JATC [REDACTED] during a rebar training class that the [REDACTED] was disparately creating an unsafe working condition for [REDACTED] by telling the apprentice carrying rebar behind [REDACTED] to walk very fast, the [REDACTED] insulted [REDACTED] said [REDACTED] was kicked out of the Union, and threw [REDACTED] out of class. After the Charging Party contacted the [REDACTED] who then contacted the Union [REDACTED] at the Union hall, the

³⁸ *Electrical Workers Local 429*, 357 NLRB at 333.

³⁹ See, e.g., *Gimbel Brothers*, 100 NLRB 870, 877 (1952) (union violated Section 8(b)(1)(A) when, as part of its campaign to achieve full membership, its agents entered a department store, surrounded sales clerks on the selling floor, and maintained a loud, continuing commotion, including insulting clerks for refusing to join the union; although the union agents did not physically obstruct the sales clerks, the Board found that the union had forced them to stop working).

⁴⁰ See, e.g., *American Postal Workers Union*, 310 NLRB 599, 602 (1993) (union agent violated Section 8(b)(1)(A) by threatening one employee that union would process her grievance only if she joined the union and signed a dues checkoff card, and by threatening another employee she would lose her grievance, or its processing would be delayed, if she did not join the union).

latter took the Charging Party back into the classroom and lectured everyone that they were not supposed to pick on people because of their non-Union past, but were to help each other learn the trade. Notwithstanding the intercession of the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) on the Charging Party's behalf, the JATC (b) (6), (b) (7)(C) had created a disparately unsafe training environment and then kicked the Charging Party out of the class for complaining about it, thereby putting (b) (6), (b) (7)(C) at a significant disadvantage for completing (b) (6), (b) (7)(C) training and improving (b) (6), (b) (7)(C) employment prospects. This conduct had the same coercive effect as a threat to deny a promotion or continued employment because of the Charging Party's refusal to sufficiently support the Union and violated Section 8(b)(1)(A).

D. The Union, through the JATC, violated Section 8(b)(1)(A) by providing the Charging Party with outdated textbooks.

We conclude that the Union, through various JATC officials, violated Section 8(b)(1)(A) by providing the Charging Party with used, outdated textbooks for (b) (6), (b) (7)(C) apprenticeship classes. The Charging Party alleged that although (b) (6), (b) (7)(C) had paid for (b) (6), (b) (7)(C) textbooks, the JATC provided (b) (6), (b) (7)(C) with used, outdated books, which had missing blueprints and pages, for use during in-class instruction and open-book examinations. On the second occasion when (b) (6), (b) (7)(C) complained to the JATC (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) books, the (b) (6), (b) (7)(C) stated they were ratty books for a "rat" like (b) (6), (b) (7)(C). The unsatisfactory books impacted (b) (6), (b) (7)(C) employment relationship because (b) (6), (b) (7)(C) completion of the apprenticeship program had been dependent, in part, on (b) (6), (b) (7)(C) performance in class. Indeed, it is reasonable to infer, and the Region may establish, that (b) (6), (b) (7)(C) lower exam scores had been caused by the outdated books and, therefore, (b) (6), (b) (7)(C) career advancement had been harmed. Accordingly, the Union violated Section 8(b)(1)(A) by providing the Charging Party with used, outdated books and discriminatorily refusing to provide (b) (6), (b) (7)(C) with new ones that contained the proper materials necessary for (b) (6), (b) (7)(C) training.

Accordingly, based on the analysis set forth above, the Region should issue complaint, absent settlement.⁴¹

/s/
J.L.S.

ADV.19-CB-200399.Response.IronworkersLocal29 [REDACTED]

⁴¹ The Charging Party also alleged that a Union member who served as a foreman for a signatory employer to which [REDACTED] was dispatched as an apprentice harassed [REDACTED] for [REDACTED] anti-Union status and that a foreman at a different signatory employer to which [REDACTED] was dispatched condoned similar harassment toward [REDACTED] at that jobsite. While we agree with the Region that there is no evidence either that the foremen were acting as Union agents or that the employers were participants in the unlawful conduct directed at the Charging Party, we note that a multi-employer association jointly administered the JATC with the Union and similarly could have been held accountable for the unlawful actions of the JATC under Section 8(a)(1) or (3) in the appropriate circumstances.