

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

Advice Memorandum

DATE: March 27, 2018

TO: Gary E. Lindsay, Regional Director
Region 9

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

SUBJECT: United Association of Journeymen and 536-2545-0100
Apprentices of the Plumbing and Pipefitting 536-2545-1200
Industry of the United States and Canada, AFL- 536-2559
CIO (PPF), Local 502
Case 09-CB-205891

The Region submitted this case for advice as to whether a union that operates an exclusive hiring hall violated Section 8(b)(1)(A) by removing an individual from its hiring-hall job-referral list because of a dues arrearage; by failing to notify him of his current liability under the union security-clause, i.e., dues arrearages and any fees required for reinstatement, or of his ability to be referred from the hiring hall as a nonmember by paying a hiring hall fee; and by consequently failing to allow him to be reinstated to the job-referral list. The Region also requested advice as to whether Kentucky's "right-to-work" statute permitted the union to charge nonmembers a fee to use its exclusive job-referral list.

We conclude that the union unlawfully removed the individual from the job-referral list for nonpayment of dues, because the union failed to apprise him of his current obligations under the union-security clause. The union also subsequently violated the Act by failing to disclose that, as a nonmember, he could be reinstated to the job-referral list by paying a hiring hall fee. Consequently, the union's failure to reinstate the individual to the referral list was unlawful. We further conclude that Kentucky's "right-to-work" law would not prevent the union from charging nonmembers a fee to be placed on the referral list. The Region should issue complaint, absent settlement, alleging that the union violated Section 8(b)(1)(A).

FACTS

The Charging Party is a Pipefitter Journeyman and was a member of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (PPF), Local 502 ("Local 502" or "the Union") from September 2, 1986 until April 1, 2017. The Union operates an exclusive hiring hall, and the Charging Party has periodically been referred through that hiring hall since he became a Union member. At the relevant time, the Union had a collective-bargaining agreement with the Mechanical Contractors Association of

Kentucky, Inc.; the contract contained a union-security clause and had a term of August 1, 2012 to July 31, 2017. Kentucky's "right-to-work" law banning union-security agreements, effective January 9, 2017, became applicable to the Union upon the expiration of that contract.¹

The Charging Party most recently worked for Ward Engineering at the Ford Kentucky Truck Plant from about December 27, 2016 until about December 30, 2016. The Charging Party was discharged from Ward Engineering for insubordination. The Charging Party had been referred to this job from Local 502's exclusive hiring hall.

Following his termination from Ward Engineering, the Charging Party asked the Union for assistance in getting his job back. According to the Charging Party, a Union business agent ("Business Agent A") reneged on his promise to discuss the matter with Ward Engineering and then call the Charging Party back.² A different business agent ("Business Agent B"), however, states that he spoke to a Ward Engineering foreman about the discharge and subsequently explained to the Charging Party what the foreman told him: the Charging Party was told he was not allowed to take a golf cart off company property, falsely told another employee that taking the golf cart was permitted, and convinced the employee to drive him off the property in the cart. On December 30, 2016, Business Agent B sent the Charging Party a text message stating, "Ward is saying they are staying with the not for rehire paper work. We can talk about next week[.]" Business Agent B states that he received no response from the Charging Party. Ward Engineering subsequently wrote the Union a letter describing the golf-cart incident and told the Union that the Charging Party should be considered ineligible for rehire.

The Charging Party also states that, after his discharge, he called the Union hall every day for 9 ½ weeks and his calls were not returned. He states that, because the Union has been ignoring his calls, he has been unable to place himself on the Union referral list and has therefore been unable to get work through the hiring hall. Business Agent A denies receiving any calls from the Charging Party, and Business Agent B states that he only received two phone calls from the Charging Party: the initial call in December 2016 asking for help getting his job back and another call later in 2017.

¹ KY. REV. STAT. ANN. § 336.130(3), and § 336.132(5) (West 2017).

² Business Agent A denies that he and the Charging Party ever spoke about this discharge.

Also at the end of December 2016, the Charging Party was suspended from Union membership for a three-month dues arrearage.³ Nonetheless, his name still appeared on the hiring-hall referral list, and, according to the Union, he still could have been referred from the hall at this point.⁴ The Union states that, under its rules, referrals only cease on the *sixth* month of nonpayment of dues or agency fees. On April 1, 2017, following six months of dues arrearages, the Charging Party was expelled from Union membership and his name was removed from the hiring-hall referral list. Although Kentucky passed a right-to-work law in January 2017, it excepted employers who were under an extant collective-bargaining agreement containing a union-security clause until the expiration of that agreement.⁵

The Charging Party learned that he was removed from the referral list and expelled from the Union for non-payment of dues from a fellow Union member in about May 2017. Union Business Agent B states that, at some point before the instant ULP charge was filed on September 7, 2017, the Charging Party called him and asked what it would cost to get back in the Union. Business Agent B replied that the Union did not want him back because of his past problems, which he asserted were well documented. Business Agent B states that the Charging Party continued saying “give me a price,” and eventually Business Agent B told him that the conversation was over and hung up. Business Agent B and the Charging Party have not spoken since. Business Agent B claims that the Charging Party never said that he wanted to be placed on the hiring-hall referral list, as opposed to requesting reinstatement in the Union.

ACTION

We conclude that the Union unlawfully removed the Charging Party from the hiring-hall job-referral list for non-payment of dues, because the Union failed to apprise him of his obligations under the union-security clause, i.e., his dues arrearages and any reinstatement fees. The Union also subsequently violated the Act by failing to advise the Charging Party of his right to nonmember referral by paying a hiring hall fee and thereafter failing to place him on the referral list as a nonmember. Lastly, we conclude that Kentucky’s “right-to-work” law would not prevent the Union from charging nonmembers a fee to be placed on the referral list. The Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A).

³ Business Agent B states that he told the Charging Party about his dues deficiency when they were discussing his discharge from Ward Engineering.

⁴ A February 14, 2017 copy of the Union’s referral list includes the Charging Party’s name, with the notation that he is “suspended.”

⁵ KY. REV. STAT. ANN. § 336.132(5).

In general, when a union operating an exclusive hiring hall prevents an employee from being hired or causes an employee's discharge, the Board presumes that the effect of the union's action is to unlawfully encourage union membership because the union has displayed to all hiring-hall users its power over their livelihoods.⁶ That presumption may be rebutted where the union's action was pursuant to a lawful union-security clause or was necessary to the effective performance of its representative function.⁷ Where, however, the union has a lawful union-security agreement and an employee's dues arrearage would justify discharge or non-referral, "it [i]s incumbent upon [the union] to advise [the employee] in explicit terms exactly what his current obligation [is] under the union-security contract to qualify for registry on its out-of-work list and referral from its hiring hall."⁸ Moreover, the Board has consistently found that unions operating hiring halls are responsible for keeping job applicants informed about hiring-hall procedures and other matters critical to their employment status, whether or not there is a union-security clause.⁹

Here, we initially conclude that it was unlawful for the Union to remove the Charging Party's name from the hiring-hall referral list in April 2017, despite his dues arrearage and the presence of a valid union-security clause, because the Union

⁶ *Stage Employees IATSE Local 720 (AVW Audio Visual)*, 332 NLRB 1, 2 (2000), *rev'd on other grounds*, 333 F.3d 927 (9th Cir. 2003); *Operating Engineers Local 18 (Ohio Contractors Ass'n)*, 204 NLRB 681, 681 (1973), *enforcement denied on other grounds and remanded per curiam*, 496 F.2d 1308 (6th Cir. 1974), *reaff'd*, 220 NLRB 147 (1975), *enforcement denied*, 555 F.2d 552 (6th Cir. 1977).

⁷ *Id.*

⁸ *Asbestos Workers Local 5 (Insulation Specialties Corp.)*, 191 NLRB 220, 221 (1971), *enforced*, 464 F.2d 1394 (9th Cir. 1972). This principle is similar to the requirement that a union provide an employee with a precise amount of dues owed, the time period in question, the method of computation, and a reasonable opportunity to meet the dues obligation before seeking the employee's discharge under a union-security clause. See *Philadelphia Sheraton Corp.*, 136 NLRB 888, 896 (1962), *enforced*, 320 F.2d 254 (3d Cir. 1963); *Western Publishing Co.*, 263 NLRB 1110, 1111-12 (1982).

⁹ *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB 50, 51 (1982) (change in hiring hall rules), *enforced per curiam*, 701 F.2d 504, 510 (5th Cir. 1983); *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 426 (1984) (qualifications for group I referrals), *enforced*, 772 F.2d 571, 576 (9th Cir. 1985); *Boilermakers Local 667 (Union Boiler Co.)*, 242 NLRB 1153, 1155 (1979) (referral rule with regard to quitting construction jobs).

did not inform him of his current obligations under the union-security clause.¹⁰ The Union clearly never met this obligation; indeed, the Charging Party only learned that he had been removed from the referral list after speaking with another employee.

We also conclude that the Union subsequently violated the Act by failing to apprise the Charging Party of his right, as a nonmember, to be reinstated to the referral list upon paying a hiring hall fee. We reject the Union's assertion that the Charging Party's question about the "price" to get back in the Union was solely about union membership and not about reinstatement to the referral list. Although the Charging Party did not precisely frame his request as seeking placement on the referral list, that was clearly at least one of his goals, particularly considering his many years of prior referrals through the hall. Moreover, even without the Charging Party's request, the Union had an affirmative obligation to disclose information that was critical to his employment status, such as the appropriate fee for nonmembers to use the hiring hall either before or after the contract expired and Kentucky's "right-to-work" law went into effect.¹¹

Finally, we conclude that Kentucky's "right-to-work" law would not prevent the Union from charging nonmembers, such as the Charging Party, a fee to be placed on the referral list. The "right-to-work" law, consistent with Section 14(b) of the Act, only bars the payment of dues to the Union as a condition of employment, i.e., through a union-security clause, but does not prohibit charging fees to a nonmember to use the hiring hall.¹² Indeed, it is well established that a union is free to charge

¹⁰ *Asbestos Workers Local 5 (Insulation Specialties Corp.)*, 191 NLRB at 221.

¹¹ *See id.*; *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB at 51. Additionally, although the Union claims in its position statement that the Charging Party had a history of misconduct on jobs to which he had been referred, which damaged the Union's relationship with employers, the Union also asserts that it would place him on its referral list if he paid a reasonable fee and provided proof of any necessary qualifications. We would therefore reject an argument that the Union's actions were justified based solely on the Charging Party's past record of misconduct. However, the Union will not necessarily be required to continue referring him through its hiring hall if he engages in additional misconduct such that his continued referral would interfere with the effective functioning of the hiring hall. *See Stage Employees IATSE Local 150 (Mann Theatres)*, 268 NLRB 1292, 1295-96 (1984) (union lawfully refused to refer employee with history of misconduct and incompetence on various jobs to which he had been referred); *Local 873, AFL-CIO (Komomo-Marian Division, Central Indiana Chapter, NECA)*, 250 NLRB 928, 928 n.3 (1980) (union lawfully refused to refer employee who had been dropped from its apprenticeship program because of excessive absenteeism).

¹² KY. REV. STAT. ANN. § 336.130(3)(a).

nonmembers referred for employment through a hiring hall a pro-rata share of costs reasonably related to the value of the service provided.¹³ And it may do so even in “right-to-work” states.¹⁴

Based on the foregoing, complaint should issue, absent settlement.

/s/
J.L.S.

ADV.09-CB-205989.Response.PPF2. (b) (6), (b) (7)(C)

¹³ *Morrison-Knudsen Co.*, 291 NLRB 250, 251 (1988); *IATSE, Local 640 (Associated Independent Theatre Co.)*, 185 NLRB 552, 558 (1970); *Local 825, Operating Engineers (Homan)*, 137 NLRB 1043, 1043-44 (1962) (contract specified that nonmembers would pay a pro-rata amount of the hiring hall expenses).

¹⁴ *Simms v. Longshoremen ILA Local 1752*, 838 F.3d 613, 619-20 (5th Cir. 2016) (finding that Mississippi’s “right-to-work” law was preempted by federal law and invalid “insofar as it could be interpreted as prohibiting unions from requiring non-union members to pay a hiring hall fee”); *Auto Workers Local 3047 v. Hardin County, Kentucky*, 842 F.3d 407, 421 (6th Cir. 2016) (citing *Simms*, supra) (finding that county “right-to-work” ordinance was preempted by federal law and invalid to the extent it restricted “hiring-hall fees paid by hired employees who are not union members—even though requirement of such fees may encourage union membership,” because the restriction did not fall “within § 14(b) [of the NLRA] and . . . because nondiscriminatory use of hiring halls is permissible under NLRA § 8(a)(3).”).