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

# Advice Memorandum

DATE: May 14, 2019

TO: Iva Y. Choe, Acting Regional Director
Region 8

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

SUBJECT: International Brotherhood of Electrical Workers, Local 673 (Tri-County Electric)
Case 08-CB-228643

536-5050-6730
536-5075-0150-6000

The Region submitted this case for advice as to whether the Union violated Section 8(b)(1)(A) by failing to provide the Charging Party with information on how to resign [redacted] Union membership and then subjecting [redacted] to internal charges and a fine for subsequently working for a non-signatory employer. We conclude that the Union's conduct violated Section 8(b)(1)(A).

## FACTS

In mid-May 2018, the Charging Party, who had been a Union member for almost [redacted] years, received a job offer from the Employer, who is a non-signatory electrical contractor that the Union for years had unsuccessfully attempted to organize. After receiving the offer, the Charging Party contacted the Union's [redacted] and asked whether [redacted] was fully vested in [redacted] pension if [redacted] left the Union. During this conversation, the Charging Party asked what [redacted] needed to do to leave the Union because [redacted] wanted to work for the Employer. The Union's (b) (6), (b) (7)(C) got very angry at the Charging Party and refused to help [redacted] leave the Union to go work for the Employer.

The Charging Party then reviewed the Union's constitution, which includes provisions explaining how Union members may obtain a withdrawal card. According to those provisions, "[a]ny member who becomes an electrical employer, a partner in an electrical employing concern, a general manager, or any other managerial position, or who retires from his trade, may apply . . . for a withdrawal card." The constitution further provides that members with withdrawal cards may have their status annulled for violating the Union's rules or bylaws and "for working with or employing nonmembers of the [Union] to perform electrical work, or for any action of the holder detrimental to the interests of the [Union's] Membership." It also specifies that a "member on withdrawal may be subject to charges, trials, and appropriate penalty in

accordance with provisions of this Constitution." There are no provisions in the constitution regarding resignation from membership. The Union's bylaws state that "[a] member who wishes to resign from the [Union] must submit the resignation in writing to the Local Union, and it shall become effective upon receipt by the Local Union."

In June, the Charging Party contacted the Union's (b) (6), (b) (7)(C) and told (b) (6), (b) that (b) (6), (b) wished to place (b) (6), (b) card in "withdrawal." On June 8, the Charging Party resigned from (b) (6), (b) employment with a Unionized contractor for which (b) (6), had been working. On June 11, the Union's (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) became aware that the Charging Party had left the Unionized contractor and took steps to surveil the Employer to determine if the Charging Party began working there. On July 12, the Charging Party received a letter from the Union signed by the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) approving (b) (6), (b) request to place (b) (6), (b) membership in withdrawal status. The Charging Party began working for the non-Union Employer several days later.

On August 3, the Union's (b) (6), (b) (7)(C) spoke with the Charging Party at the Employer's facility and informed (b) (6), (b) (7 that although (b) (6), was on withdrawal status, (b) (6), still was a Union member and had to follow the Union's constitution and bylaws. The (b) (6), (b) (7)(C) encouraged the Charging Party to stop working for the Employer, and the Charging Party refused. On August 7, the Union directed the Charging Party to appear before the Union's disciplinary board to answer internal charges the (b) (6), (b) (7)(C) had filed against (b) (6), (b) (7)( including, "[w]orking for, or on behalf of, any employer . . . whose position is adverse or detrimental to the [Union]."

On September 10, the Union conducted a hearing at its offices where the Charging Party, the (b) (6), (b) (7)(C), and the (b) (6), (b) (7)(C) testified. During the hearing, the Charging Party testified that (b) (6), mistakenly thought obtaining a withdrawal card permitted (b) (6), (b) ( to work for the Employer. The Union's (b) (6), (b) (7)(C) testified that, in mid-May, after the Charging Party expressed interest in working for the Employer, (b) (6), told the Charging Party (b) (6), would not help (b) (6), (b) ( go non-Union, that the Employer was one of the Union's biggest nemeses, and that the Charging Party could call someone else if (b) (6), wanted to find out more information. On September 21, the Union found the Charging Party guilty of all internal charges and fined (b) (6), (b) ( for working for the Employer.

**ACTION**

We conclude that the Union violated Section 8(b)(1)(A) by impeding the Charging Party's ability to refrain from Union activities when it failed to provide (b) (6), (b) (7 requested information on how to resign (b) (6), (b Union membership. Section 8(b)(1)(A) provides that a union commits an unfair labor practice if it "restrain[s] or coerce[s] employees in the exercise" of their Section 7 rights, which include the right to refrain from joining or assisting labor organizations.[1] In interpreting that statutory provision, the Board has held that unions cannot place any meaningful restrictions on the right of their members to resign from union membership because, among other reasons, "when a union seeks to delay or impede a member's resignation, it directly impairs the employees' Section 7 right to resign or otherwise refrain from union or other concerted activities."[2]

Consistent with those principles, the Board has liberally interpreted statements that could be considered requests to resign membership. For example, although a union may lawfully require a member who wishes to resign to put the resignation in writing and send it to a designated union officer,[3] the member need not use any "magic words" to resign, as long as the communication clearly indicates that the employee no longer wishes to be a member.[4] Moreover, the Board has long held

---

[1] *See, e.g.*, *Pattern Makers' League v. NLRB*, 473 U.S. 95, 100–01 (1985) (upholding Board's decision that employees have a fundamental right under Section 7 to resign their union membership at any time, and that Section 8(b)(1)(A) prohibits unions from placing any substantive restrictions on that right).

[2] *Electrical Workers IBEW Local 58 (Paramount Industries)*, 365 NLRB No. 30, slip op. at 2 (Feb. 10, 2017) (quoting *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1333 (1984), approved by *Pattern Makers' League v. NLRB*, 473 U.S. at 103 & n.13, 104-05)), *enforced*, 888 F.3d 1313 (D.C. Cir. 2018). *See also Sheet Metal Workers Local 73 (Safe Air)*, 274 NLRB 374, 375 (1985) (clarifying that *Neufeld Porsche-Audi* was "not meant to be limited to restrictions on resignation during a strike or lockout," but applied to "*any* restrictions"), *enforced*, 840 F.2d 501 (7th Cir. 1988).

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

[4] *See, e.g., Sheet Metal Workers Local 22 (Miller Sheet Metal)*, 296 NLRB 1146, 1146 n.2, 1156–57 (1989) (finding member effectively resigned where he titled his letter to the union "Declaration of Financial Core Status" and stated "I do not want to be a member of [the union]," but indicated he was willing to pay initiation fees and dues as a condition of employment); *Shopmen's Local 539 (Zurn Industries)*, 278 NLRB 149, 151–52 (1986) (adopting ALJ's finding that members who stated they wanted to

that unions have a fiduciary duty to deal fairly with their members, and that this fiduciary duty "includes the obligation to notify members of the lack of restrictions on resignations."[5] In addition to that specific obligation, unions have a general obligation to respond to employees' requests for information regarding membership and employment issues.[6]

Applying these principles, it is clear that the Union's refusal to provide the Charging Party with requested assistance in May 2018 on how to resign from the Union violated Section 8(b)(1)(A). When the Charging Party communicated to the (b) (6), (b) (7)(C) that (b) (6), wanted to leave the Union so that (b) (6), could work for the Employer, that statement would reasonably be interpreted as a request to resign membership and the Union had a fiduciary duty to provide the Charging Party with accurate information about how to resign.[7] By refusing to provide the Charging Party the information (b) (6), (b needed to resign (b) (6), (b membership, the Union directly impaired (b) (6), (b Section 7 right to refrain from engaging in Union activities.[8]

The defenses that the Union raises in response to this allegation are without merit. Initially, the Union asserts that the Charging Party was only asking for a withdrawal card, as evidenced by (b) (6), (b) later specific request for a withdrawal card. But the Charging Party's initial request was to "leave the Union" and work for the

---

"withdraw my membership" or "withdraw from the union" had effectively resigned; ALJ noted no requirement that employees use "magic words" to resign); *Electrical Workers IBEW Local 340 (Hulse Electric)*, 273 NLRB 428, 432 (1984) ("for an employee to effectively resign from membership, it is only necessary that he 'clearly indicate that he no longer wishes to be bound by the union'").

[5] *Glass Pottery Workers Local 158 (Atlas Foundry)*, 297 NLRB 425, 428 (1989) (finding union violated Section 8(b)(1)(A) by maintaining and enforcing clause in its constitution stating, "to the extent permitted by Federal Labor Law" members could not resign during a strike; after *Neufeld Porsche-Audi*, federal law did not permit such a restriction, which the union's language sought to conceal).

[6] *See* GC Memorandum 19-01, *General Counsel's Instructions Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges*, at 2 (Oct. 24, 2018) (stating the General Counsel's position that a union's failure to "respond to inquiries for information or documents by the charging party . . . constitutes more than mere negligence and, instead, rises to the level of arbitrary conduct unless there is a reasonable excuse or meaningful explanation").

[7] *See Glass Pottery Workers Local 158 (Atlas Foundry)*, 297 NLRB at 428.

[8] *See Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB at 1333.

Employer, and the only way to accomplish both of those things would be to resign membership. It was only after the Union failed to provide information in response to that initial request that the Charging Party sought a withdrawal card. Indeed, the (b) (6), (b) (7)(C) testified at the September 10 internal Union hearing that in response to the Charging Party's expressing interest in working for the Employer in mid-May, the (b) (6), (b) (7)(C) said (b) (6), (b would not help the Charging Party "go non-Union," that the Employer was one of the Union's biggest nemeses, and that the Charging Party could call someone else if (b) (6), wanted more information. In addition, after the Charging Party left (b) (6), (b job with a Union contractor a month later, the (b) (6), (b) (7)(C) discussed keeping an eye on the Charging Party to see if (b) (6), ( ultimately followed through with (b) (6), (b) ( intention of working for the Employer. These statements and actions establish that the Union knew that the Charging Party had asked how to resign (b) (6), (b) ( membership so that (b) (6), could work for a non-signatory contractor.

Second, there is no merit to the Union's assertion that its constitution and bylaws clearly informed the Charging Party of how to resign. The Union's constitution explains the withdrawal procedure, while its bylaws explain the resignation procedure, and the relevant provisions in each document do not reference each other. Without help interpreting those provisions – help which the Union was refusing to provide – the Charging Party simply followed the withdrawal procedure that (b) (6), was familiar with from a prior experience. There is no evidence that the Charging Party would have chosen to withdraw had the Union explained the difference between withdrawing and resigning when (b) (6), asked for help in mid-May 2018. Rather, evidence regarding the mid-May conversation makes clear that the (b) (6), (b) (7)(C) knew that the Charging Party was trying to leave the Union so (b) (6), (b could work for a non-Union employer, and (b) (6), (b also knew the Charging Party did not know the proper procedure to permit (b) (6), (b) (7) to do so.[9]

Finally, the Union's argument that the Charging Party always intended only to withdraw, as evidenced by (b) (6), (b) ( concern about losing (b) (6), (b) ( pension benefits, also fails. Art. XI, Sec. 6, cl. (g) of the Union's constitution states that members who resign "with an approved vested benefit" do not forfeit their pension benefits, and Art. XI, Sec. 3 states that individuals with 20 or more years of "A" membership can apply for vested benefits. The Charging Party's Union card shows that (b) (6), had been an "A" member for

---

[9] *See, e.g., Electrical Workers IBEW Local 340 (Hulse Electric)*, 273 NLRB at 433 & n.14 (finding member who had asked union business manager what he had to do so he could work without incurring union discipline had effectively resigned, despite his subsequent letter requesting only withdrawal, which had been based on the business manager's instructions).

almost [redacted] years, indicating [redacted] could have applied for vested pension benefits before resigning if the (b) (6), (b) (7)(C) had instructed [redacted] on the proper steps to take.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by placing restrictions on the Charging Party's resignation from membership and then fining [redacted] for [redacted] failure to comply with membership obligations.[10]

/s/
J.L.S.

ADV.08-CB-228643.Response.IBEWLocal673[redacted]

---

[10] The Region should not allege that the amount of the Union's fine was excessive and therefore an independent violation. It is difficult to successfully challenge a fine amount when a union has provided a colorable rationale for its calculation, and the remedy for the Union's unlawful restriction on the Charging Party's resignation will include rescission of all fines imposed after that unlawful conduct. *See Sheet Metal Workers Local 22 (Miller Sheet Metal)*, 296 NLRB at 1146 n.2, 1148, 1157 (finding union violated Section 8(b)(1)(A) by fining member for conduct done after he effectively had resigned with letter requesting financial core status; remedy included rescission of the fines); *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB at 1336, 1337 (rescinding fine against former member for crossing picket line post-resignation).