The Region submitted this case for advice as to whether IBEW Local 176 ("the Union") violated Section 8(b)(1)(A) and 8(b)(4)(ii)(A) of the Act by bringing internal disciplinary charges against and fining the Charging Party, who believed he had resigned membership in a sister local when he began operating a nonunion electrical business, to pressure him into signing an IBEW contract. [1]

We conclude that the Union did not violate Section 8(b)(1)(A) because that provision does not extend to the Charging Party as an employer-member, and it does not prevent a union from attempting to persuade an employer-member to sign a contract even absent majority support for the union. We also conclude the Union did not violate Section 8(b)(4)(ii)(A) because it did not act in furtherance of an objective prohibited by that provision.

In April 2018, he acquired and has since owned his own electrical business, Inland Electric, LLC. In June 2018, the Charging Party contacted Local 134 to ask how he could sever his ties so he could operate his business nonunion. Local 134 did not provide him with any information about resigning membership but provided him with an application to obtain either a participating or an honorary withdrawal card. The Charging Party elected the latter option, believing it was the appropriate option to resign from Local 134. Local 134 processed his application and sent him an honorary withdrawal card, which stated on its face that he remained bound by the IBEW Constitution. [2] To complete his honorary withdrawal, the Charging Party had to sign and return the card to Local 134.

In mid-July 2018, the Union began asking the Charging Party if he would make his business a signatory to an IBEW contract. In December 2018, the Charging Party firmly responded that he would not become an IBEW signatory and cut off any further contact with the Union. From February through late summer 2019, the Union picketed larger jobsites where the Charging Party’s business performed electrical work.

In 2020, the Union filed internal disciplinary charges against the Charging Party. The Union explained that it promptly did so upon determining that the Charging Party remained an honorary-withdrawal cardholder. By letter dated , the Union informed the Charging Party of the internal charges filed against him and of the hearing scheduled before the Union’s trial board on . The charges alleged that the Charging Party violated the following two provisions of the IBEW Inside Agreement:

Section 2.09: No member of I.B.E.W., while he remains a member of the I.B.E.W. and subject to employment by Employers operating under this Agreement, shall himself become a contractor for the performance of any electrical work.

Section 4.02: The Union shall be the sole and exclusive source of referral of
applicants for employment.

The charges also alleged that the Charging Party had violated several provisions of the IBEW Constitution, including, but not limited to, Article XXIV, Section 5, which reads, in pertinent part:

The validity of any withdrawal card shall be dependent upon the good conduct of the member. It can be annulled by any L.U. or by the I.P. for violation of the laws of the I.B.E.W., or the bylaws and rules of any L.U., or for working with or employing nonmembers of the I.B.E.W. to perform electrical work, or for any action of the holder detrimental to the interests of the I.B.E.W.

The Charging Party opted not to attend the hearing. Instead, attorney sent the Union a letter dated , 2020 attempting to explain that the charges were baseless because the Charging Party had resigned membership in 2018. By letter dated , the Union informed the Charging Party that its trial board had found guilty of all charges and fined over $494,000, which was due and payable immediately.

Initially, we conclude that the Union did not violate Section 8(b)(1)(A) by bringing internal disciplinary charges against and fining the Charging Party. Section 8(b)(1)(A) makes it unfair labor practice for a union to restrain or coerce employees in the exercise of their Section 7 rights, including the right to refrain from assisting or joining a union. The Board has declined to extend the scope of Section 8(b)(1)(A)’s protections to employers, including employers that are owned or operated by union members. See Sheet Metal Workers Local 104 (Losli International, Inc.), 297 NLRB 1078, 1078-79 (1990). Here, because the Union brought internal charges against and fined the Charging Party in capacity as the owner and operator of Inland Electric, is not covered by Section 8(b)(1)(A)’s protections.

We further conclude that the Union’s conduct toward the Charging Party did not directly restrain or coerce employees in violation of Section 8(b)(1)(A). A union’s peaceful attempts to persuade an employer to recognize it as the exclusive bargaining representative for a unit of employees among whom it does not enjoy majority support does not violate Section 8(b)(1)(A). See NLRB v. Teamsters Local 639 (Curtis Brothers), 362 U.S. 274, 290 (1960). Thus, peaceful picketing by a minority union to compel an employer to grant it exclusive recognition did not violate Section 8(b)(1)(A) because that provision is intended to prohibit only “union tactics involving violence, intimidation, and reprisal or threats thereof” that go beyond the general pressures placed on employees of a targeted employer. Id. Similarly, a union’s maintenance of a preempted lawsuit did not violate Section 8(b)(1)(A) even though it sought, in part, certification as the employees’ bargaining representative for the employer’s alleged breach of a stipulated election agreement because “peaceful invocation of judicial processes for that objective should not be deemed restraint or coercion.” Bakery Workers Local 6 (Stroehmann Bakeries), 320 NLRB 133, 138 (1995).

Consistent with the principles from Curtis Bros. and its progeny, it has been recognized that a union that brings internal disciplinary charges against and fines a member for operating a business without a union contract does not restrain or coerce that member’s employees within the meaning
of Section 8(b)(1)(A). See Plumbers Local 589 (L&S Plumbing), 294 NLRB 616, 617, 619-20 (1989) (stating that while the union attempting to encourage the employer-member to sign a union contract would have been a “valid reason” for the internal union charges and fine, its actual motive of compelling the discharge of nonmembers was not). Moreover, we have previously applied the same reasoning from Curtis Brothers and its progeny to extend it to a case where a union invoked internal union charges to pressure an employer-member to sign a union contract. Specifically, in Electrical Workers IBEW Local 26, Case 11-CB-4184, Advice Memorandum dated December 13, 2010, the union was found to not have restrained or coerced the employer-member’s employees by offering to significantly reduce an internal fine lawfully imposed on the member for operating his business nonunion if he signed a collective-bargaining agreement.

Applying these principles, the Union did not restrain or coerce the Charging Party’s employees in violation of Section 8(b)(1)(A) by bringing internal charges against and fining The Charging Party remained an honorary member of Local 134, even if inadvertently, and subject to the IBEW Constitution during all relevant times. Indeed, the honorary withdrawal card that signed and returned to Local 134 explicitly included this condition on its face. In 2020, the Union initiated internal disciplinary charges against upon learning that was an honorary member working as a contractor in violation of the IBEW Constitution and Inside Agreement. The Charging Party alleges the Union initiated the charges to pressure to sign a union contract. Nevertheless, the Union’s conduct does not involve the type of violence, intimidation, or threats that would have restrained or coerced the Charging Party’s employees from exercising their Section 7 rights, particularly where the Union’s conduct was targeted at the Charging Party in capacity as an employer-member, and there has been no impact on employees, since the Charging Party has not surrendered to the Union’s pressure by signing a minority contract. Thus, under these circumstances, the Union did not violate Section 8(b)(1)(A) regarding the Charging Party’s employees. [3]

Finally, we conclude that the Union’s conduct did not violate Section 8(b)(4)(ii)(A). Section 8(b)(4)(ii)(A) prohibits a union from threatening, coercing, or restraining an employer for the purpose of forcing it to join any labor or employer organization or enter into an agreement prohibited by Section 8(e), wherein the employer agrees to cease doing business with another person. Here, regardless of whether the Union engaged in threatening or coercive conduct, it did not have an objective prohibited by Section 8(b)(iii)(4)(A). The Union’s objective was to pressure the Charging Party, in capacity as the owner and operator of Inland Electric, to sign a contract with IBEW, presumably the Inside Agreement. That did not require to join either a labor organization, especially where the Inside Agreement prohibits IBEW members from becoming employers, or a multi-employer organization. See, e.g., Ruan Transport Corp., 234 NLRB 241, 242 & n.6 (1978) (noting that signing a “me-too” agreement is different from joining the employer association that bargained the underlying contract). Moreover, the Charging Party operates a business in the construction industry and under the proviso to Section 8(e), such employers may enter certain types of agreements otherwise prohibited by that section. See, e.g., Iron Workers (Southwestern Materials), 328 NLRB 934, 937 (1999) (quoting Woelke & Romero Framing v. NLRB, 456 U.S. 645, 666 (1982)). In short, because the Union did not have the requisite unlawful objective, it could not violate Section 8(b)(4)(ii)(A).
Based on the preceding analysis, the Region should dismiss the charge, absent withdrawal. This email closes this case in Advice. Please do not hesitate to contact us with any questions or concerns.

[1] The Region also considered, sua sponte, whether the Union’s conduct violated Section 8(b)(1)(B) and 8(b)(4)(ii)(B). Because the facts here do not support finding a violation of either section, we consider only the charge allegations.

[2] The Charging Party had no further contact with Local 134 from mid-2018 until late 2020, when | received the Union’s charges and then asked Local 134 to clarify that | had in fact resigned in 2018. The Charging Party declined to file a charge against Local 134 alleging it violated Section 8(b)(1)(A) by failing and refusing to timely honor request to resign.

[3] The Board has found that a union violates Section 8(b)(1)(A) by initiating and maintaining legal proceedings against an employer seeking to impose a collective-bargaining agreement on nonunit employees either in contravention of a prior Board order or absent a showing of majority support. See, e.g., Local 340, New York New Jersey Regional Joint Board (Brooks Brothers), 365 NLRB No. 61, slip op. at 3-4 (2017), and the cases discussed therein. The Board has found such conduct to be statutory restraint and coercion that violates Section 8(b)(1)(A) “under established NLRA principles.” Stroehmann Bakeries, 320 NLRB at 138, n.10. Unlike those cases, it is unclear whether the Board would find internal union disciplinary proceedings against employer-members to be coercive conduct like grievance or court proceedings that have an illegal objective. See, e.g., Brooks Brothers, 365 NLRB slip op. at 4, n.8. Regardless, the Charging Party accepted the possibility of internal Union charges in agreeing to abide by the IBEW Constitution when | obtained | honorary withdrawal card. Thus, to the extent | employees (i.e., Inland Electric’s employees) are aware of the Union’s conduct here, they would not view it as coercing their Section 7 rights as was found in the cases just noted.

Sincerely,

Attorney, Division of Advice
National Labor Relations Board

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