DATE: March 30, 1989

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I.A.T.S.E., Local 839, and I.A.T.S.E. 536-5050-3380
(DIC Animation City, Inc.)
Case 31-CB-7758

This case was submitted for advice on the issue of whether language contained in a union's newsletter implicitly offered to waive fines for members who work for a nonunion employer if they sign union authorization cards; and, if so, whether the union's offer to waive fines in these circumstances is violative of Section 8(b)(1)(A).

FACTS

By way of background, in I.A.T.S.E and Motion Picture Screen Cartoonists, Local 839 (DIC Enterprises, Inc.), Case 31-CB-5950, the Region issued a complaint on March 28, 1985, alleging, inter alia, that I.A.T.S.E. and I.A.T.S.E, Local 839 (the Union) violated Section 8(b)(1)(A) of the Act by distributing a pamphlet which offered to reduce initiation fees for employees if they joined Local 839 by November 1, 1984 and signed a recognition card for the International to be used for a representation election. This case was subsequently settled.

In support of the instant charge the Employer has furnished as background various Local 839 newsletters. An article in Local 839's July 1987 newsletter states:

From August 1, 1987 to September 1, 1987, D.I.C. will not be off limits to members of Local 839. During this period, Local 839 is seeking names of union personnel working there so that we can ask the National Labor Relations Board to call an election to organize the studio. We need names of employed union members to do it. ANYONE with knowledge of union artists working at D.I.C., please contact the Local 839's office. Our purpose isn't punishment of union members, but a way to organize D.I.C. as a union shop. The Union's number is 766-7151.

The first two paragraphs of an article from Local 839's August 1987 newsletter state:

> Local 839's Executive Board has voted to extend the window period for DIC Enterprises (wherein the animation shop will NOT be off-limits to members of Local 839) for an additional month (September 1st - September 31st). The Board's purpose is to allow more time for additional names to be collected from DIC employees. Our Union will then submit these names to the National Labor Relations Board and request that an election to organize the studio be held.

Any union member who comes forward with names will NOT be brought up on charges or punished in any way by Local 839. Our purpose is not to punish members now employed with DIC, but to show the NLRB that we have enough union cartoonists working at DIC Enterprises for an election to be called.

Local 839's March 1988 newsletter discusses on page 1 the fining of 37 members for "working for the non-union, off-limits studio DIC", and on page 3, discusses working at off-limits studios.

With respect to the fines assessed against the 37 members, the Union admits that intraunion charges were brought against 37 members on December 2, 1987 for working for the Employer. The charges alleged: (1) that the members were working at an off-limits, non-union shop; (2) that the members had failed to cooperate in organizing the non-union shop. On February 16, 1988, Local 839's membership voted to sustain charges against approximately 30 of 37 members for working for the Employer, but it dropped all but one charge that they had failed to cooperate in organizing. The members against whom charges were sustained were assessed fines ranging from $50 to $500, with fines being waived for approximately seven of these members.[1]

On August 25, 1988, the Union filed a petition in D.I.C. Animation City, Inc., Case 31-RC-6440, which was subsequently withdrawn due to an insufficient showing of interest.

The Employer bases the instant charge on language from Local 839's March and May 1988 newsletters. Page 3 of the March 1988 newsletter states:

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[1] The Employer alleges that the Union has imposed fines only against those members working for the Employer who did not sign union authorization cards, while not fining those members working for the Employer who did sign authorization cards. On February 9, 1989 the Employer filed an amended charge, adding an allegation that the Union filed a civil suit to collect the fine imposed against a member working for the Employer who did not sign an authorization card.

If ANY member of our Local is considering employment at a non-union shop whether off-limits or not, we urge you to come in and sign a union representation card. THERE IS NO WAY your new employer will be able to find out if you signed one, but it WILL enable us (assuming enough cards are received) to have the National Labor Relations Board order a union election at that shop. It will enable us to preserve the jobs, wages and better working conditions for which we've fought so long and hard.

Also, Local 839's May 1988 newsletter states:

IF UNION WORKERS CURRENTLY EMPLOYED WITH DIC, OR CONSIDERING EMPLOYMENT WITH DIC, WILL SIMPLY COME INTO THE UNION OFFICE AND SIGN A UNION REPRESENTATION CARD (WHICH THE PRODUCER WILL NEVER KNOW ABOUT), WE WILL SOON HAVE ENOUGH CARDS TO PRESENT TO THE NATIONAL LABOR RELATIONS BOARD FOR A UNION ELECTION AT DIC. THINK ABOUT IT ! SIGNING A UNION REPRESENTATION CARD IS FAR MORE PRODUCTIVE THAN BEING BROUGHT UP ON CHARGES AND FINED FOR WORKING AT A NON-UNION, OFF-LIMITS SHOP. THE JOB AND BENEFITS YOU SAVE (AND PENSION YOU ADD TO) WILL BE YOUR OWN!

The instant charge was filed by the Employer on September 14, 1988.

ACTION

We concluded that the charge should be dismissed, absent withdrawal, based on the view that the Union has a legitimate interest in protecting its collective-bargaining representative status by seeking to organize nonunion competitors and that the right to discipline members who fail to assist it by signing union authorization cards outweighs employees' rights to be free of coercion or restraint in selecting their bargaining representative.

In order for a union to fulfill its obligation as exclusive collective bargaining representative, it must be able to promulgate its own rules and have the right to impose reasonable discipline on members who do not obey such rules. [2] The right of unions to impose reasonable discipline has been upheld even when Section 7 rights of members are infringed. This line of cases, beginning with Allis-Chalmers, supra, is based on the theory that members of a union have already made a free choice to participate with their union in concerted activity. They do not

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[2] N.L.R.B. v. Allis-Chalmers, 388 U.S. 175, 180-181, 65 LRRM 2449 (1967), in which the Court found that the union did not violate the Act by threatening and imposing fines against members who crossed the union's picket line and went to work during an authorized strike.

automatically surrender their right to refrain from engaging in such activity, but they may be subject to intraunion discipline unless they resign their membership before so refraining. Thus, if they choose to remain members, they may be subject to discipline; and if they wish to refrain from participating in Section 7 activity, then they can resign in order to avoid discipline.

A union's interest in seeking the support of its members in organizational activities, however, must be balanced against the basic labor policy granting employees the right to freely select a collective-bargaining representative. In Cook's Supermarket,[3] the Board found that a union's threat of discipline, including fines, against members employed by nonunion employers for the members' failing to assist or actually opposing the union's organizing effort at their employers' stores, did not violate Section 8(b)(1)(A). In that case, the "threat of a fine was aimed not at deterring members from invoking the Board's procedures, but at requiring its members to support the organizational effort." [4] The Board in Cook's found that Allis-Chalmers controlled because union organizing is as much a part of protecting the union's status as collective bargaining representative as the strike in Allis-Chalmers was. Consequently, since the union in Allis-Chalmers had a legitimate interest in disciplining members who failed to assist the union in protecting its status, the union in Cook's had a similar legitimate interest in disciplining members who failed to assist the union's organizing drive or who actively opposed the union's efforts. Further, inasmuch as the members were free to resign from the union in order to either remain inactive or to actually campaign against the union, and because they were still free to vote as they wished in a union representation election, the Board reasoned that the "threat of discipline was a valid enforcement of a legitimate internal regulation that did not contravene an overriding policy of labor law."[5]

The Board, however, has found a Section 8(b)(1)(A) violation for fining a member for signing authorization cards for and otherwise supporting a rival union, on the grounds that the fine is a punitive measure which impedes employees' access to the Board's processes.[6] Moreover, an offer to waive initiation fees for employees who sign cards prior to an election is violative of Section 8(b)(1)(A), as

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[3] Amalgamated Meatcutters, Local 593 (Cook's Supermarkets, et al.), 237 NLRB 1159 (1978).

[4] Cook's, supra, at 1161.

[5] Cook's, supra, at 1161.

[6] Inland Boatman's Union of the Pacific (Dillingham Tug & Barge Company, 276 NLRB 1261 (1985); Operating Engineers (Elcon Pipeliners), 247 NLRB 203 (1980).

the offer would have a "reasonable tendency to coerce those employees who desire to refrain from joining or assisting the union" by threatening higher fees later when maintenance of membership may be a condition of employment. [7] However, the underlying concern of the Board in those lines of cases is not present here. Thus, although we initially concluded that language in the May 1988 newsletter offers to waive fines if members sign an authorization card and would reasonably tend to coerce or restrain employees, we further concluded that it would not interfere with access to the Board's representation procedures and would therefore not violate Section 8(b)(1)(A). In this case especially, access to the Board's procedures is not impeded as members are free to vote as they desire in a Board election. Further, unlike in Gregg, supra, the Union's offer to waive the fine for working at a nonunion employer does not implicitly threaten members who refuse to sign authorization cards with potential impact on their jobs. Moreover, Gregg was dealing with a situation where employees were coerced to become members at a time when they were not required to do so. Here, the employees were already members. If members did not wish to assist the Union in its organizational effort, they had the option of resigning in order to remain inactive or to actively oppose the Union's efforts.

Thus, we concluded that, as in Cook's, the Union here had a legitimate interest in disciplining members who failed to assist the organizing drive by signing authorization cards. Accordingly, further proceedings are unwarranted herein and the charge should be dismissed in its entirety, absent withdrawal. [8]

H.J.D.

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[7] Building Material and Dump Truck Drivers, Local 420 (Gregg Industries), 274 NLRB 603, 604 (1985).

[8] Inasmuch as the offer to waive the fines is not unlawful, the portion of the amended charge protesting the Union's suit to collect the fine should, of course, also be dismissed, absent withdrawal.