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John A. Penello, Director  
Region 5

Gerald Brissman, Assistant General Counsel

**RELEASE**

Group Health Association

Case No. 5-CA-4420

Office and Professional Employees International

Union, Local No. 2, AFL-CIO

Case No. 5-CB-918

DEC 10 1969

These cases, involving 8(a)(1), (2), and (3) and 8(b)(1)(A) and 8(b)(2) charges, were submitted for advice because of their relation to earlier cases involving the same parties and similar charges. <sup>1/</sup> They raise questions concerning wage rates paid by the Employer after it executed a members-only contract with the Union.

Facts

The Employer has had a policy of "equal pay for equal work" dating back before the events involved in this proceeding and has generally conformed its pay scale to the wage guidelines of the Federal Government. The members-only contract which it executed with the Union in April 1968 provided a five percent increase in wages for union members. This increase created a disparity between the wages of union members and of non-members. The disparity was narrowed in July 1968 when the Employer gave a general wage increase patterned after new Government guidelines and credited the increase which it had already given union members against the new schedule of wages. And in January 1969 wages of members and non-members became substantially equal when the Employer made annual in-grade promotions. After the January wage changes, however, the Union took to arbitration the question whether the Employer was paying

<sup>1/</sup> Case No. 5-CA-4122 where complaint was considered unwarranted--Advice Memorandum dated October 1, 1968; Appeal denied February 17, 1969; Reconsideration of Appeal denied March 24, 1969; and Case No. 5-CB-845 where 8(b)(2) complaint was considered unwarranted, Advice Memorandum dated October 1, 1968, and where 8(b)(1)(A) complaint was dismissed by the Board, 179 NLRB No. 25.

*Rec'd 8/6/69*

union members the wages called for by the contract covering them, and on February 28, the arbitrator issued a decision upholding the Union's position. In April the Employer partially implemented the arbitration award, thereby, in effect, reestablishing the wage disparity which existed as of December 31, 1968. In May or June it fully implemented the award, which had the effect of reestablishing the wage disparity which had arisen when the original contract wage rate for members went into effect as of February 1968, and of cancelling the substantially comparable pay which had been effected for non-members. At the time it implemented the arbitration award, the Employer decided not to grant non-members the wages established for union members by the arbitration proceeding. On July 9, the Employer and the Union set a new wage rate for members, retroactive to May 1, 1969, when they agreed upon a new members-only contract to replace the original contract which had terminated. On the same date the Employer adopted a new wage scale for non-members equal to the contract scale for members but effective only as of July 1, 1969. Thus, as of July 1, 1969, the Employer had equal wage scales for members and non-members, but the scale had been applied for members retroactively to May 1, 1969, and for non-members only as of July 1, 1969.

#### Action

It was concluded, as recommended by the Region, that 8(a)(1), (2) and (3) complaint is warranted based on cumulative evidence over an extended period of time including the 10(b) period herein which establishes that the Employer withheld from employees who were non-union, wages which they otherwise would have been granted under its "equal pay for equal work" policy, in order to encourage such employees to affiliate with the Union. In drawing an inference that the Employer was unlawfully motivated in withholding such payments, it was noted that any disparity in wage rates for equal work was a departure from the Employer's established "equal pay for equal work" policy, reaffirmed after the members-only contract went into effect. 2/ Yet in April and again in July the Employer's Board of Trustees took affirmative action declining to follow an equal-pay policy. Significantly, the debate on both these occasions was limited to a discussion of union considerations and the equal-pay policy and did not involve any discussion of financial or business considerations. At an April 14 meeting, when the trustees rejected a proposal that the pay scale for non-member employees be set at the higher level established by the arbitration award, the proponents of the proposal identified the issue as being "whether the Employer was willing to change its long standing policy of 'equal pay for equal work'". At a July 9 meeting, when the trustees adopted a proposal to make the wage scale of the new members-only contract applicable

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2/ The Staff Member's Handbook, dated June 1968, setting out the Employer's personnel policy, states: "The staff of GRA will be compensated on the basis of equal pay for approximately equal work..." Note also the statements of Trustee Luikart at executive sessions of the Board of Trustees on April 14, 1969, and July 9, 1969.

to non-members as of July 1, 1969, it was pointed out by the Employer's attorney that adoption of the proposal would result in two months' additional pay to union members. During the discussion at the July 1969 meeting, one of the trustees (Daniels) opposed any wage increase for non-members, stating that they were "free-loaders" and did not deserve the fruits of the union-negotiated agreement without paying their fair share of the cost. He also expressed the view that if employees wanted any pay increases or benefits, they could readily obtain them by joining the Union. A similar view had been presented by another trustee (Bierwagen) earlier in 1968. He told a Union representative at a meeting in April 1968 that "all we can give you is lead time. We'll make the wages and benefits active for Union members now, but what we do for the others is strictly up to us. You will have to do the best you can with lead time, though we are trying to give you as much of that as we can." At a Trustees' meeting on May 27, 1968, concerned with updating personnel policy, he declared it was his understanding that the purpose behind the updating was to give non-union employees wage increases comparable to those under the Union contract. For this reason, he said, he was urging indefinite postponement of the proposal. He further stated that if employees wanted an increase "all they had to do was to join the Union".

The facts overall were considered to warrant the inference that the Employer's action in withholding from employees who were not union members the wages which would have been applicable to them under its "equal pay for equal work" policy, was due to union and not business considerations and constituted unlawful aid to the Union in violation of Section 8(a)(2) and discrimination against non-members of the Union in violation of Section 8(a)(3). <sup>3/</sup> This conclusion does not imply that a wage disparity arising solely from a members-only contract, or a continuation of such wage differences, would in itself warrant an inference of improper motive. <sup>4/</sup> It is simply a determination that the particular circumstances presented in the instant cases, including the evidence of the Employer's equal-pay policy and the absence of any evidence

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<sup>3/</sup> If the Region finds with respect to the amended charges filed October 23, 1969, that the Employer also maintained different conditions of employment tenure based on the considerations discussed above, proceeding on the allegations of the amended charges would also be warranted.

<sup>4/</sup> Members-only contracts, providing benefits for member employees, have not been held unlawful under the Act. See Retail Clerks v. Lion Dry Goods, Inc., 369 U.S. 17, 29, and Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 237-238. See also Arbitrator's Opinion and Award of February 28, 1969, in the Matter of Group Health Association, Inc. and Local 2, Office and professional Employees International Union, AFL-CIO. And the determination to issue complaint in this proceeding does not reflect upon the validity of the two members-only contracts between the Employer and the Union.

that factors other than union considerations impelled the Employer's decision not to effectuate its equal-pay policy, support a conclusion of unlawful motivation in these cases. 5/

With respect to the charges against the Union, it was concluded that no 8(b)(2) allegation was warranted as the evidence indicates that the Union directed pressure only toward obtaining benefits for its members. However, an 8(b)(1)(A) allegation was considered warranted, based upon the statement of July 11, 1969, which the Union posted, misrepresenting the retroactivity feature of the new contract and thereby encouraging employees to join the Union. 6/

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- 5/ The instant cases were thus considered different from Case No. 5-CA-4122 which was dismissed earlier. No inference of unlawful motivation was deemed warranted on the quantum of evidence there presented which, as noted in the appeal consideration, showed that consistent with the equal-pay policy there was in effect substantially equal pay for equal work, and resistance by the Employer to the Union's request for a contract provision precluding equal pay for non-members.
- 6/ The fact that the statement was withdrawn within a short period of time after a protest was not considered to warrant administrative dismissal of this aspect of the CB charge.