

Chicago Local No. 458, Graphic Communications International Union, AFL-CIO, CLC, formerly known as Chicago Local No. 245, Graphic Arts International Union, AFL-CIO and Donald King and Vincent Evola and Robert Clark and William Slattery and Donald Wayne. Cases 13-CB-10465, 13-CB-10466, 13-CB-10469, 13-CB-10470, and 13-CB-10472

September 28, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On December 28, 1984, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs, and the Charging Parties joined in the General Counsel's exceptions. The Respondent also filed a motion to reopen the record, and the General Counsel filed a brief in opposition thereto.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, briefs, and motion¹ and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

I. ISSUES

The issues in this case are (1) whether the Respondent violated Section 8(b)(1)(A) of the Act by maintaining in effect and enforcing a restriction on the right of its employee-members to resign their membership in the Union; and (2) whether the Respondent violated Section 8(b)(1)(A) and (B) of the Act by (a) refusing

¹The Respondent has moved to reopen the record to receive into evidence certain correspondence between the Respondent and the General Counsel dated after the judge's decision issued in this case. The correspondence indicates that at the time of the instant hearing there was no written delegation of authority from the then Acting General Counsel to the Board's Regional Offices to prosecute complaints that had been issued during the term in office of the Acting General Counsel, but on which complaints hearings were conducted during the 3-day period between the expiration of the Acting General Counsel's term and the initiation of the successor General Counsel's term. The Respondent argues that, in view of this proffered evidence of no written delegation of prosecutorial authority, the Board should overrule the judge's ruling that the hearing in this case could proceed despite the temporary vacancy in the office of the General Counsel.

We reject the Respondent's argument. In ruling that the hearing could proceed in the temporary absence of a Board General Counsel, the judge did not rely on the existence of a *written* delegation of prosecutorial authority to Regional Offices. Thus, lack of evidence of such a written delegation of prosecutorial authority does not undermine the correctness of the judge's ruling to proceed with the hearing. Further, the Respondent has not shown any extraordinary circumstances that would warrant reopening the record under the standards set forth in Sec. 102.48(d)(1) of the Board's Rules and Regulations. The evidence that the Respondent now seeks to adduce was available at the time of the hearing and the Respondent has given no reason why it was not presented previously. Accordingly, the Respondent's motion to reopen the record is denied.

to accept the resignations submitted by three employee-members and two supervisor-members, the latter being representatives of the Employer for the purpose of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act; (b) expelling these five individuals from membership; and (c) requesting the Employer to discharge them.

II. FACTS

The Employer and the Respondent Union (then known as Chicago Local No. 245, Graphic Arts International Union (GAIU), AFL-CIO) were parties to a collective-bargaining agreement for the period May 1, 1980, to April 30, 1983; they did not renew their agreement.²

Article 19.9, Resignation, of the GAIU constitution, which was in effect through June 30, 1983, provided in pertinent part as follows:

A member may resign from membership only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International, but continues otherwise to be associated with such industry.

On July 1, 1983, the Respondent became known as Chicago Local No. 245, Graphic Communications International Union (GCIU), AFL-CIO, CLC. On the same day, the GCIU constitution superceded the GAIU constitution. Article XX, section 12, of the GCIU constitution provided in pertinent part as follows:

A member may resign from membership, upon approval of the Local Executive Board, only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International Union, as defined in Article II, Section 6, Jurisdiction.

On July 1, 1984, the Respondent became known as Chicago Local 458, GCIU.

On various dates in May 1983,³ Charging Party employees Robert Clark, Donald King, and Donald Wayne, and Charging Party supervisors/employer-representatives Vincent Evola and William Slattery, all submitted their written resignations from union membership.⁴

²As the judge noted in the first paragraph of sec. I.A. of his attached decision, a decertification election was conducted among the unit employees on March 18, 1983. The Board subsequently set that election aside and directed that a second election be conducted. *Noral Color Corp.*, 276 NLRB 567 (1985). The Board has been administratively advised that in the second election a majority of the employees did not vote in favor of continued representation by the Respondent.

³All dates are 1983, unless otherwise shown.

⁴In answering the amended consolidated complaint, the Respondent admitted that both Slattery and Evola were, at all times material, supervisors within

Continued

On July 6, the Respondent notified each of the Charging Parties in writing that its records indicated that the Charging Parties were delinquent in their payment of Local Union dues and International Union charges for May, June, and July, and in their payment of Local and International assessments for May and June. These notices of delinquencies advised the Charging Parties that, inter alia, dues and assessments are payable monthly in advance; that a member 30 days in arrears is automatically in bad standing; and that a member 60 days in arrears is subject to expulsion, suspension, or other discipline.

On July 14, the Respondent notified each of the Charging Parties in writing that their resignations were not accepted. More specifically, the Respondent's letters notified the Charging Parties of the provisions of article 19.9 of the GAIU constitution, set forth in pertinent part above.⁵ The letter also expressed the Respondent's understanding that Clark, King, Wayne, and Evola were continuing to work in the printing trade as employees in the printing industry and that Slattery was engaged in a supervisory capacity in the printing industry. The Charging Parties were advised that their resignations therefore could not be accepted under article 19.9 of the GAIU constitution.

On August 2, the Respondent sent to each of the Charging Parties another notice of delinquency, stamped "FINAL NOTICE," advising them that they were delinquent in the payment of Local Union dues and International charges for May through August, and in their payment of Local and International assessments for May through July. The Charging Parties were urged to "PLEASE REMIT AND AVOID EXECUTIVE BOARD ACTION."

On August 15, the Respondent sent to each of the Charging Parties a "Statement and Notice of Executive Board Action." They were again notified of their delinquencies in the payment of dues, charges, and assessments to the Local and International, and also were advised that unless their accounts were brought into good standing immediately, the matter would be brought before the Local executive board on September 7, for action expelling them from membership for nonpayment of dues, charges, and assessments.

On September 21, the Respondent sent to each of the Charging Parties an "Expulsion Notice," notifying them that they had been expelled from membership in

the Local Union on September 17 for nonpayment of dues and assessments.

On the next day, September 22, the Respondent notified the Employer in writing that each of the Charging Parties had been expelled from Local Union membership on September 17 for "failure to tender union dues and assessments," and requested that the Employer discharge each of the Charging Parties within 5 days for "failure to comply with Section 2.3 of our current agreement" (which requires discharge of employees who fail to pay union dues).⁶

Although the Respondent did not simultaneously transmit to the Charging Parties copies of its letter to the Employer requesting their discharge, each of them obtained a copy, either on or soon after September 22. Employees Clark and Wayne and Employer-Representative Evola received their copies directly from Union Steward Richard Hvale; Employer-Representative Slattery received his copy from Evola; and employee King did not recall how he acquired his copy. Wayne and Slattery spoke directly about this matter to the Employer's president, Alan Schneider, who told them that he was "going to look into it, and not to worry about it." Clark was told by one of the other Charging Parties that Schneider had said "not to worry about it right now, until we see what happens." King testified that one of the things he had heard about the letter was the "Company's statement that says . . . don't worry about it yet." Evola did not recall whether he had discussed the Respondent's letter requesting these discharges with Schneider or any other employer official: "I don't recall if I did at the time. I believe someone else did, and I was talking to them, but I don't recall, personally, going to Alan Schneider or anybody else." Schneider did not testify and none of the witnesses testified that they gave any message to Evola not to worry about this matter.

On September 27, the Employer notified the Respondent in writing that it rejected the Respondent's requests for discharge of the Charging Parties. The Employer expressed to the Respondent its opinion that the Respondent's requests were unlawful under the National Labor Relations Act, because there was no collective-bargaining agreement, and thus no union-security clause, in effect between the parties. The record does not show whether the Charging Parties received copies of, or were otherwise aware of, the Employer's

the meaning of Sec. 2(11) of the Act and representatives of the Employer for the purposes of collective bargaining or the adjustment of grievances. Additionally, the parties stipulated that Slattery was "a supervisor of the Employer as defined by Section 2(11) of the Act, and an adjuster of grievances." Evola and Slattery are referred to as "employer-representatives" in this decision.

⁵As seen, the GAIU constitution, referred to in the Respondent's July 14 letters rejecting the Charging Parties' resignations, had actually been superseded about 2 weeks earlier, on July 1, by the GCIU constitution—which, in any event, contained similar restrictions on resignation from union membership.

⁶Sec. 2.3 of the parties' May 1, 1980, to April 30, 1983 collective-bargaining agreement states:

Any employee who fails to tender union dues, or initiation fees to the Union shall be discharged by the employer within five (5) days after receipt of notice from the Union that the employee has failed to make the required payments to the Union.

As seen, however, by the time of the Respondent's September 1983 requests for discharge of the Charging Parties, the collective-bargaining agreement (including, of course, the union-security provisions of sec. 2.3) had expired, without renewal or replacement.

September 27 letter to the Respondent rejecting the latter's requests for their discharge.

On October 4, the Respondent replied to the Employer's September 27 letter. The Respondent stated that its September 27 request for discharge of the Charging Parties was an inadvertent error; that the Respondent had intended merely to advise the Employer of the Charging Parties' expulsion from membership for failure to pay their union dues; and that the Respondent did not intend, then or at present, to request that the Charging Parties be discharged from employment as a result of their expulsion from union membership.

Neither the Respondent nor the Employer provided the Charging Parties with copies of the Respondent's October 4 retraction of its requests for their discharge. Charging Party Clark testified that he saw a copy of the Respondent's October 4 letter posted on the bulletin board at work, "probably" in October. The record does not show whether Clark told anyone about this posting. The other Charging Parties testified that they were not notified by the Respondent until January 10, 1984, that its September 22 requests for their discharge had been retracted on October 4. The Respondent sent each of the Charging Parties a letter on January 10, stating that it had not intended by its September 22 letter, or by any other means, to request their discharge; that an unintentional error had been made; and that the Respondent had confirmed to the Employer in the Respondent's October 4 letter that the Respondent was not making a request for the discharge of the Charging Parties. The Respondent enclosed a copy of its October 4 letter to the Employer with its subsequent January 10, 1984 letter to the Charging Parties.

III. ANALYSIS AND CONCLUSIONS

A. Restrictions on Resignation from Membership

We agree with the judge, for the reasons he set forth in section I,A of his decision, that the Respondent violated Section 8(b)(1)(A) of the Act,⁷ as alleged, by maintaining in force and effect the restrictions on resignation from union membership contained in article XX, section 12 of the GCIU constitution, as set out above. However, the General Counsel excepts to the judge's failure also to order the Respondent to cease and desist from *enforcing* the restrictions on resignation from union membership contained in article 19.9 of the GAIU constitution. The General Counsel argues that the resignations from union membership at issue

⁷Sec. 8(b)(1)(A) of the Act provides:

It shall be an unfair labor practice for a labor organization or its agents—
(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

in this case were submitted in May, prior to the June expiration of the GAIU constitution, and that in any event the Respondent specifically and expressly relied on these by-then expired GAIU restrictions in July, when it refused to accept the resignations.

We find merit in the General Counsel's exception on this point. Therefore, in addition to requiring the Respondent to cease and desist from maintaining in force and effect the GCIU restrictions on resignation, we shall also require the Respondent to cease and desist from enforcing the GAIU restrictions on resignation.⁸

B. Refusal to Accept Resignations

1. From the employees

We agree with the judge, for the reasons he set forth in section I,A of his decision, that the Respondent violated Section 8(b)(1)(A) of the Act when it refused to accept the resignations submitted by employees King, Clark, and Wayne.

2. From the employer-representatives

Contrary to the judge, we find that the Respondent did not violate Section 8(b)(1)(B) of the Act⁹ when it refused to accept the resignations submitted by Employer-Representatives Evola and Slattery. We find that the Respondent's refusal to accept these resignations, in itself and without more, did not restrain or coerce the Employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances. In finding that the Respondent violated Section 8(b)(1)(B) by refusing to accept the resignations of Employer-Representatives Evola and Slattery, the judge relied on *Typographical Union (Register Publishing)*, 270 NLRB 1386 (1984). However, for the reasons fully set forth in *Pressmen Local 5 (Birmingham News)*, 300 NLRB No. 1, issued today, we have overruled *Register Publishing* in pertinent part (i.e., the 8(b)(1)(B) violation).

The General Counsel points to no evidence, nor do we find any, that would tend to show that the Respondent's mere refusal to accept Evola's and Slattery's resignations, without more, had or reasonably might have an adverse effect on the performance of their 8(b)(1)(B) duties. In short, we find that any potential adverse effect on the performance of the 8(b)(1)(B) duties of these employer-representatives stemming from the Respondent's refusal to accept their

⁸The judge also ordered the Respondent to remove the unlawful provision in the GCIU constitution from its governing documents. We agree. See *Auto Workers Local 73 (McDonnell Douglas)*, 282 NLRB 466 (1986), elaborating on the reasoning of *Machinists Local Lodge 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), approved in *Pattern Makers League v. NLRB*, 473 U.S. 95, 103 (1985).

⁹Sec. 8(b)(1)(B) of the Act provides:

It shall be an unfair labor practice for a labor organization or its agents—
(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances

resignations is too speculative, hypothetical, and abstract to support a conclusion that, by refusing to accept these resignations, the Respondent restrained or coerced the Employer in its selection of its representatives for the purposes of collective bargaining or grievance adjustment, in violation of Section 8(b)(1)(B) of the Act.¹⁰ Accordingly, we shall dismiss this allegation.

C. Expulsions from the Union

1. Expulsions of the employees

For the reasons set forth in *Food & Commercial Workers Local 81 (MacDonald Meat Co.)*, 284 NLRB 1084 (1987), we agree with the judge's conclusion that the Respondent did not violate Section 8(b)(1)(A) of the Act by expelling employees King, Clark, and Wayne from membership.

In *MacDonald Meat*, the Board found that the respondent union violated Section 8(b)(1)(A) by *fining* employees who resigned their union memberships and returned to work during a strike, but the Board held that a union does not violate the Act by *expelling* or *suspending* from membership employees who resign their union memberships and return to work during a strike. 284 NLRB at 1084–1085. The Board explained that extracting money from an individual is a highly coercive measure that does not directly implicate a union's freedom to admit and expel whom it wishes. But suspending or expelling an individual who has already signified that he does not wish to be a member of the organization from which he is being suspended or expelled is arguably less coercive than fining that individual and is precisely the kind of action that Congress intended to permit unions to take with relative impunity under Section 8(b)(1)(A)'s proviso protecting a union's right to set its own rules for acquisition or retention of membership. *Id.* at 1085–1086.

MacDonald Meat also noted that a union's right to suspend or expel members who resign and return to work during a strike is a logical corollary of a member's right to resign, recognized in *Neufeld Porsche-Audi* and *Pattern Makers*, *supra*. The Board explained:

Principles of voluntary unionism invoked in those cases logically apply to all parties to an association; accordingly, just as, in vindication of Section 7 rights, we have protected resigning employees from compelled association with other union members so, in vindication of the interests protected by the proviso, we should protect the union members who choose to stay from compelled association with those who choose to leave. As a practical matter, this means simply that the union is free to announce that it is removing the resign-

ing employee from eligibility for membership for either a certain period (time-specified suspension) or indefinitely (expulsion or indefinite suspension). In our view, this effectuates an important policy of the proviso and does no evident harm to any other policy of the labor laws.

We have not overlooked our dissenting colleagues' contention that our decision here improperly contravenes the principle that employees should be free to leave the union and "escape" its rules. Insofar as that principle is embodied in Section 8(b)(1)(A) of the Act, however, only actions by a union that constitute restraint or coercion are prohibited. As we have explained, at least absent some threat of monetary penalty, suspending or expelling those who have signified their intent not to belong to the union, in our view, does not tend to coerce or restrain them.¹¹

Applying these principles to the facts of this case, we find that the Respondent's expulsions of employees King, Clark, and Wayne did not violate Section 8(b)(1)(A) of the Act. Although the Respondent recited the pertinent provisions of article 19.9 of the GAIU constitution (as set forth in sec. II of this decision, *supra*) in its July 14 letters rejecting the employees' resignations, the focus of the letters, and the only reason expressed therein for rejecting the resignations, was the employees' failure to cease their employment in the printing trade as employees in the printing industry: "If this is so," wrote the Respondent, "it would appear that your resignation[s] cannot be accepted under the provisions of [article] 19.9." True, during this time the Respondent also tried to get the employees to pay what the Respondent considered to be delinquent dues and charges, and ultimately expelled the employees because of their failure to make such payments. But the Respondent did not threaten to take any action against them directly *to collect* these dues and charges, or to impose a monetary penalty for their failure to pay. Thus, as the majority stated in *MacDonald Meat*, "absent some threat of monetary penalty, suspending or expelling those who have signified their intent not to belong to the union, in our view, does not tend to coerce or restrain them." 284 NLRB at 1086.

Applying this standard to the case at hand, we find that the expulsions of the employees were related solely to the regulation of the Respondent's own internal affairs, and did not reasonably tend to restrain or coerce the employees in the exercise of their Section 7 right to refrain from engaging in union activity. Accordingly, we conclude that the Respondent has not violated Section (8)(b)(1)(A) of the Act by expelling employees King, Clark, and Wayne.

¹⁰ See *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573 (1987); *Birmingham News*, *supra*.

¹¹ 284 NLRB at 1086 (fn. omitted).

2. Expulsions of the employer-representatives

We also agree with the judge that the Respondent did not violate Section 8(b)(1)(B) when it expelled Employer-Representatives Evola and Slattery from membership for their failure to pay dues after they resigned. Again, for the reasons discussed above, we find that this was purely an internal union matter. Further, as the Supreme Court stated in *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, supra, “It is difficult to maintain that an employer is restrained or coerced because a union member must accept union expulsion . . . to continue in a supervisory position [emphasis in original].”¹² The judge found that the Respondent’s expulsion notices did not threaten to take any other punitive action against Evola and Slattery or to make any further attempts to collect their postresignation dues. The judge concluded therefore, and we agree, that the Respondent’s expulsions of these employer-representatives did not tend to restrain or coerce the Employer in its selection of its representatives for purposes of collective bargaining or the adjustment of grievances.

D. Requests for Discharge

1. Requests for discharge of the employees

Contrary to the judge, we find, as alleged by the General Counsel, that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by requesting in September 1983 that the Employer discharge employees King, Clark, and Wayne for their failure to tender their union dues, in accordance with section 2.3 of the collective-bargaining agreement—an agreement that had expired without renewal on April 30.

Shortly after the Employer received the Respondent’s September 22 letters requesting the discharge of these employees, they obtained copies of these letters and were thus made aware of the Respondent’s efforts to have them discharged for not paying their union dues.¹³

The Respondent’s attempt to enforce the union-security provisions of the expired collective-bargaining agreement violated Section 8(b)(2) of the Act.¹⁴

Also, the Respondent’s attempt to have King, Clark, and Wayne discharged for failure to pay dues under contractual union-security provisions that had expired, coming on the heels of the Respondent’s unlawful re-

fusal to accept their resignations from union membership, had a tendency to restrain or coerce these employees in the exercise of their right under Section 7 of the Act to refrain from engaging in union activity, and thus violated Section 8(b)(1)(A) of the Act.¹⁵

In finding that the Respondent violated Section 8(b)(1)(A) of the Act by requesting that the Employer discharge employees King, Clark, and Wayne under the circumstances described above, we reject the judge’s finding that the Respondent’s requests for discharge did not tend to coerce the employees because (1) they were told by the Employer, directly or indirectly, not to worry about it; (2) the Respondent’s September 22 written requests were obviously a mistake, because the contractual union-security provisions had expired without renewal more than 4 months earlier; and (3) the Respondent’s October 4 written notice to the Employer stated that the Respondent’s requests for discharge were in error and that the Respondent did not intend to request that the Charging Parties be discharged. Although we find, as discussed in the following section of this decision, that the Respondent’s retraction of its requests for discharge warrants dismissal of the 8(b)(1)(B) allegation, we find that the retraction had no such curative effect on the 8(b)(1)(A) and (2) violations.

We do not find that it would be reasonably obvious to the employees in question that the form letters requesting their discharges were simply inadvertent mistakes. A reasonable reading of these letters through the eyes of the targeted employees would reveal that the facts recited in each letter concerning each employee’s expulsion from the Union because of his failure to pay dues were accurate and that the Respondent’s request for their discharge was entirely consistent with its previous unlawful efforts to prevent them from resigning. The erroneous reference in the letters to “our current labor agreement,” while as discussed below mitigating the potential coercive effect of these letters on the Employer, had no such mitigating effect on the targeted employees themselves. In light of the Respondent’s earlier unlawful conduct in refusing to accept valid resignations from its members, this reference could reasonably be interpreted by the employees to mean that the Respondent was attempting to enforce the expired contract without regard to the legality of its action.

Nor do we agree with the judge that the Respondent acted promptly to nullify the reasonable potential coercive effects of these letters on the employees. Although the Respondent did notify the Employer that its discharge requests were in error, and that it retracted them, the Respondent waited almost 4 months, until January 1984, to notify the employees of this retraction, and then gave them no assurances that it would not take similar action in the future, stating only that

¹² 481 U.S. at 594.

¹³ We find it unnecessary to rule on the General Counsel’s motion to amend the complaint to allege that Richard Hvale was the Respondent’s agent. As long as the employees had actual knowledge of the Respondent’s illegal requests for their discharges, it is irrelevant whether they learned of the Respondent’s action directly from the Respondent’s agent or from another source.

¹⁴ *Iron Workers Local 455 (Precision Fabricators)*, 291 NLRB 385 (1988); *Machinists District 15 (Burroughs Corp.)*, 231 NLRB 602 (1977). See also *Electrical Workers IBEW Local 3 (Mulhill Electric)*, 266 NLRB 224 (1983), enf. mem. 742 F.2d 1438 (2d Cir. 1983). Cf. *Trico Products Corp.*, 238 NLRB 1306 (1978) (contract continued in effect past expiration date).

¹⁵ *Burroughs Corp.*, supra.

it did not “now” make any such request. Even though the Employer told employee Wayne (as well as Employer-Representative Slattery) not to worry about these requests, and later apparently posted the Respondent’s October 4 letter to the Employer retracting them,¹⁶ these actions, taken by the Employer, could not effectively reassure the employees involved as to the Respondent’s future intentions. Thus, we find that the Respondent did not effectively cure the inherent coercive effects on the three Charging Party employees of the September 22 requests for their discharge.¹⁷

2. Requests for discharge of the employer-representatives

We agree with the judge, for the reasons discussed below, that, particularly under the circumstances of this case, the Respondent did not violate Section 8(b)(1)(B) by requesting that the Employer discharge Employer-Representatives Evola and Slattery pursuant to the provisions of the expired contractual union-security provisions. More specifically, and unlike the situation surrounding the 8(b)(1)(A) violation based on the coercive effects on the employees of the Respondent’s discharge requests, we find that any violations of Section 8(b)(1)(B) that might be based on the Respondent’s request that the Employer discharge Employer-Representatives Evola and Slattery were in any event promptly and fully cured vis-a-vis the Employer by the Respondent’s quick repudiation and retraction of its discharge requests.¹⁸

To summarize, on Thursday, September 22, the Respondent wrote to the Employer requesting that Evola and Slattery be discharged for “failure to comply with Section 2.3 of our current agreement.” The Employer understood from the beginning that the Respondent’s request was perhaps a mistake and that it was, in any event, without effect. As the Employer well knew, the “current labor agreement” referred to in the Respondent’s September 22 letters had, of course, expired without renewal almost 5 months earlier, on April 30. It was thus clear to the Employer that there were no union-security provisions in effect in September, and thus no grounds for the Respondent legitimately to request, much less for the Employer to agree to, the discharge of Evola and Slattery for failure to tender union dues. Indeed, the Employer’s president, Alan Schneider, promptly told Employer-Representative Slattery (as well as employee Wayne) that he was “going to look into it, and not to worry about it.”

¹⁶ But the record establishes that only one of the Charging Parties—employee Clark—actually saw this posting.

¹⁷ *Auto Workers Local 376 (Emhart Industries)*, 278 NLRB 285 (1986); see also *Auto Workers Local 785 (Dayton Forging)*, 281 NLRB 704 (1986).

¹⁸ In light of our finding that any arguable violation of Sec. 8(b)(1)(B) was cured by the Respondent’s retraction and repudiation of its requests for discharge of the employer-representatives, it is unnecessary for us to pass on the question of whether the Respondent’s requests would have violated Sec. 8(b)(1)(B) in the absence of such curative circumstances.

On Tuesday, September 27, the Employer replied to the Respondent’s requests for discharge by asserting that (1) the requests were unlawful under the Act; (2) no employee can be required, as a condition of employment, to tender union dues unless a valid collective-bargaining agreement is in full force and effect; (3) the most recent collective-bargaining agreement between the Employer and the Respondent had expired without renewal; and (4) “In view of the above, Noral rejects your request to terminate any of the employees specified in your letter.”

On the following Tuesday, October 4, the Respondent replied to the Employer, expressing the Respondent’s regret and assuring the Employer that the September 22 requests for discharge were inadvertent errors and that the Respondent did not intend then or at present to request that the Charging Parties be discharged.

Section 8(b)(1)(B) of the Act prohibits a union from restraining or coercing an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. As the Supreme Court has stated, it is the employer, not the individual supervisor-member/employer-representative, who is protected from coercion by Section 8(b)(1)(B).¹⁹

Regardless of whether the Respondent’s letters requesting that the Employer discharge Employer-Representatives Evola and Slattery might be unlawful under other circumstances, we find under the instant circumstances that any arguably coercive effect that the Respondent’s letters might otherwise have had on the Employer’s exercise of its right to select its own representatives for the purpose of collective bargaining or grievance adjustment was substantially mitigated by the self-evident facial inaccuracy of the reference to a “current labor agreement” in the letters themselves, and was in any event fully cured by the Respondent’s prompt and total repudiation and retraction of its requests on October 4.²⁰

CONCLUSIONS OF LAW

1. By maintaining in effect the restrictions on resignation from membership contained in article XX, section 12 of the GCIU constitution, and by enforcing the restrictions on resignation from membership contained in article 19.9 of the GAIU constitution, the Respondent has violated Section 8(b)(1)(A) of the Act.

¹⁹ *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, supra, 481 U.S. at 594.

²⁰ The Employer’s own prompt assurances to Slattery and Wayne that they need not worry about the Respondent’s requests, and the Employer’s own prompt followup declaration to the Respondent that the requests for discharge were unlawful and that the Employer rejected them are additional evidence that the Respondent’s requests did not have a tendency to coerce the Employer in the selection of its representatives.

2. By refusing to accept the resignations from membership submitted by Charging Party employees Donald King, Robert Clark, and Donald Wayne, the Respondent has violated Section 8(b)(1)(A) of the Act.

3. By requesting that the Employer discharge Charging Party employees King, Clark, and Wayne for failure to pay union dues in accordance with the requirements of the union-security provisions of an expired collective-bargaining agreement that had not been renewed and was no longer in effect, the Respondent violated Section 8(b)(1)(A) and (2) of the Act.

4. The Respondent has not violated the Act in any other way.

ORDER

The National Labor Relations Board orders that the Respondent, Chicago Local No. 458, Graphic Communications International Union, AFL-CIO, CLC, formerly known as Chicago Local No. 245, Graphic Arts International Union, AFL-CIO, Chicago, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining in effect article XX, section 12 of the constitution of the Graphic Communications International Union to the extent it provides as follows:

Resignation. A member may resign from membership, upon approval of the Local Executive Board, only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International Union, as defined in Article II, Section 6, Jurisdiction.

(b) Enforcing or giving effect to article 19.9 of the constitution of the Graphic Arts International Union to the extent it provides as follows:

Resignation. A member may resign from membership only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International, but continues otherwise to be associated with such industry.

(c) Refusing to accept valid resignations from membership submitted by members who are employees within the meaning of Section 2(3) of the Act.

(d) Requesting Noral Color Corporation or any other employer to discharge members who are employees within the meaning of Section 2(3) of the Act for failure to pay union dues in accordance with the requirements of union-security provisions contained in an expired collective-bargaining agreement that has not been renewed and is no longer in effect.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from its governing documents the portion of article XX, section 12 of the constitution of the Graphic Communications International Union set forth in paragraph 1(a) above.

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix."²¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Noral Color Corporation, if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations not found here.

MEMBER CRACRAFT, concurring in part and dissenting in part.

I agree with my colleagues in all respects, except that for the reasons set forth in Chairman Dotson's and my dissenting opinion in *Food & Commercial Workers Local 81 (MacDonald Meat Co.)*,¹ I find that the Respondent violated Section 8(b)(1)(A) by expelling employees Donald King, Robert Clark, and Donald Wayne from membership for their failure to pay postresignation dues.

It is undisputed that the Respondent expelled the employees in large part because of their failure to pay postresignation dues. The employees resigned between May 12–25, 1983.² They were expelled in September for failing to pay their May, June, July, and August dues. Although the Respondent's bylaws establish that the May dues were payable on May 1, prior to the employees' resignations, the bylaws also establish that a member does not actually fall into bad standing until he or she has been in arrears for 30 days—in this case, May 31, *after* all three of the employees had resigned. In any event, the record clearly establishes that the employees in question were expelled in principal part be-

²¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹ 284 NLRB 1084 (1987).

² All dates are 1983 unless otherwise indicated.

cause of their failure to pay what were indisputably *postresignation* dues, for June, July, and August.

By expelling the employees for nonpayment of postresignation dues, the Respondent has unlawfully refused to acknowledge the effectiveness of their resignations. This conduct violates Section 8(b)(1)(A) of the Act, and I so find.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain in our governing documents article XX, section 12 of the Chicago Local No. 458, Graphic Communications International Union, AFL-CIO, CLC constitution, to the extent it provides as follows:

Resignation. A member may resign from membership, upon approval of the Local Executive Board, only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International Union, as defined in Article II, Section 6, Jurisdiction.

WE WILL NOT enforce or give effect to article 19.9 of the constitution of the Graphic Arts International Union to the extent it provides

Resignation. A member may resign from membership only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International, but continues otherwise to be associated with such industry.

WE WILL NOT refuse to accept valid resignations from membership.

WE WILL NOT request Noral Color Corporation, or any other employer, to discharge employees at a time when there is no contractual union-security clause in effect.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove from our governing documents the above portion of article XX, section 12 of the Graphic Communications International Union constitution.

CHICAGO LOCAL NO. 458, GRAPHIC
COMMUNICATIONS INTERNATIONAL
UNION, AFL-CIO, CLC, FORMERLY
KNOWN AS CHICAGO LOCAL NO. 245,
GRAPHIC ARTS INTERNATIONAL UNION,
AFL-CIO

Alan M. Kaplan, Esq., for the General Counsel.

Thomas D. Allison, Esq. (Cotton, Watt, Jones Ring), of Chicago, Illinois, for the Respondent.

Rossie David Alston Jr., Esq., of Springfield, Virginia, for the Charging Parties.

Daniel V. Kinsella, Esq. (Fox and Grove), of Chicago, Illinois, for the Company Intervenor.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Chicago, Illinois, October 15, 1984. The charges were filed by employees Donald King, Robert Clark, and Donald Wayne and Supervisors Vincent Evola and William Slattery from December 13 to 16, 1983,¹ and later amended, and a consolidated complaint was issued July 31, 1984, and amended October 11, 1984.

After the April 30 expiration of the collective-bargaining agreement, the five individuals resigned from the Union. The Union refused July 14 to accept their resignations, expelled them September 17 for nonpayment of dues, made written requests September 22 that the Company discharge them, and notified the Company October 4 that the discharge requests were an "inadvertent error."

The primary issues are (a) whether the Union, the Respondent, maintained unlawful constitutional restrictions on the right of members to resign and whether (b) the refusal to accept the resignations of the three employees and two supervisors, (c) the expulsions, and (d) the discharge requests violated Sections 8(a)(1)(A) and (B) and 8(b)(2) of the National Labor Relations Act.

On the entire record,² including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, the Union, and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company Intervenor, Noral Color Corporation, prepares film transparencies for the printing industry at its facility in Chicago, Illinois, where it annually ships goods valued over \$50,000 directly outside the State. The Union admits and I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the

¹All dates are in 1983 unless otherwise indicated.

²The Union's and the General Counsel's unopposed motions to correct the transcript, dated November 29 and 30, are granted and received in evidence as (G.C. Exhs. 24, 25.)

Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act. (The Union was known as Chicago Local No 245, Graphic Arts International Union, AFL-CIO until July 1, 1983, when the name of the International was changed to Graphic Communications International Union, AFL-CIO. Since June 1, 1984, when GCIU Locals 245 and 8-B were merged, the Union has been known as Chicago Local No 458, Graphic Communications International Union, AFL-CIO, CLC.)

A. Refusal to Accept Resignations from Union

Since about 1968 the Union has represented lithographic production employees of the Company. The most recent collective-bargaining agreement, effective from May 1, 1980, to April 30, 1983, contained union-shop and checkoff provisions. In March 1984 a decertification election resulted in a 14-to-14 tie vote. (Judge Robert Giannasi's September 19, 1984 decision in Cases 13-CA-23136 and 13-RD-1475 (G.C. Exh. 10), setting aside the election, is presently pending before the Board.) The Company has not checked off any union dues since the April 30 expiration of the agreement.

The five Charging Parties, Robert Clark, Vincent Evola, Donald Ring, William Slattery, and Donald Wayne, did not pay their May dues and assessments, but instead mailed letters of resignations to the Union, dated May 5-25 (G.C. Exh. 15). The Union did not respond until July 14.

In the meantime on June 1, as stipulated by the parties (G.C. Exh. 4, par. 2), the Union began honoring the GCIU constitution, which provides in article XX, section 12

Resignation A member may resign from membership, upon approved of the executive Board, only if he is in good standing and has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International Union, as defined in Article II, Section 6, Jurisdiction.

On July 14 Union President Harry Conlon sent the five individuals letters, refusing to accept their resignations (G.C. Exh. 16). Citing similar restrictions in the former GAIU constitution, that a resigning member must be in "good standing" and have "ceased to be engaged as an employee or in a supervisory capacity" in such an industry, Conlon stated his understanding that they were continuing to work in the printing industry and that "your resignation cannot be accepted." The parties agree that at the time, Clark, King, and Wayne were working as employees and Evola and Slattery were supervisors. (I agree with the parties that it is unnecessary to resolve the dispute over whether Evola had supervisory authority before his June 7 promotion (G.C. Exh. 23A).) The Union admits in its answer that both Evola and Slattery were representatives of the Company "for purposes of collective bargaining or the adjustment of grievances" (Tr. 12).

The General Counsel, citing the Board's recent decision in *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), contends that any restriction on a union member's resigning is unlawful. She contends that the refusal to accept the resignations of employees Clark, Ring, and Wayne because they were still employed in the industry, was based on an unlawfully restrictive constitutional provision and violated Section 8(b)(1)(A) of the Act. Pointing out that the em-

ployees were not in bad standing when they submitted their resignations before the expiration of 30 days after their dues checkoff ceased (art. XII, sec. 12.3 of the bylaws, G.C. Exh. 7), the General Counsel contends that the Union's July 14 letters show that the late or nonpayment of dues had nothing to do with the Union's failure to accept the resignations, but "even if the Charging Parties were in arrears and in bad standing, such status could not affect their right to resign." The General Counsel, citing *Typographical Union (Register Publishing)*, 270 NLRB 1386 (1984), further contends that the refusal to accept the resignations of Supervisors Evola and Slattery restrained and coerced the Company in its selection of representatives for grievance adjustment and violated Section 8(b)(1)(B).

The Union contends that unlike *Neufeld Porsche-Audi* and other Board cases involving resignations under Section 8(b)(1)(A), "the Union's refusal to accept the members' resignations in this case was not directed at any activity, such as resigning to cross a picket line, which was arguably protected by Section 7. Nor did the Union attempt to take any internal disciplinary action against these individuals which would somehow adversely affect their rights under Section 7 of the Act. . . . All that the Union did was enforce its internal rules with respect to the retention of membership" as specifically permitted by the 8(b)(1)(A) proviso. That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership. The Union argues that "this case presents a pure instance of whether the proviso . . . has any meaning whatsoever, under any circumstances, or whether the current Board has so rewritten the Act as to eliminate the express language of the statute altogether. . . . In the absence of illegal restraint or coercion for engaging in Section 7 activities, the Union's nondiscriminatory enforcement of its internal union rules concerning retention of membership in expressly permitted and protected. The statute permits no other reading." The Union therefore contends that its rejection of the requests to resign, because none of the employees "was current in his dues when he attempted to resign" and each "continued to be engaged as an employee in the printing industry" was, without more, "clearly protected by the proviso to Section 8(b)(1)(A) of the Act." Concerning its refusal to accept the resignations of Supervisors Evola and Slattery, the Union contends that the 8(b)(1)(B) allegations should be dismissed because at the time (after the decertification election and the expiration of the contract), no collective bargaining was going on, the Union was not involved in the adjustment of any grievances, and "there is absolutely no evidence the union took any action to adversely affect the conduct of the two supervisors in their status as grievance adjusters or collective-bargaining representatives.

I agree with the General Counsel. As the Board held in *Neufeld Porsche-Audi*, above, 270 NLRB 1330, 1333, employees have a Section 7 right to resign and any restrictions placed by a union on its members' right to resign are unlawful. Because of the Union's unlawful constitutional restrictions on the right to resign from membership, the resignations were effective upon receipt by the Union. *Newspaper Guild Local 3 (New York Times)*, 272 NLRB 338 (1984). And as held in *Register Publishing*, above, a union's refusals to recognize the effective resignations of employee and supervisor members are independent violations of Sec-

tion 8(b)(1)(A) and (B) of the Act. I therefore find that the Union's refusal to accept the valid resignations of employees Clark, King, and Wayne violated Section 8(b)(1)(A) and its refusal to accept the valid resignations of Supervisors Evola and Slattery violated Section 8(b)(1)(B).

I also agree with the General Counsel that the maintenance of the first sentence of the resignation provisions in the GCIU constitution, article XX, section 12, violates Section 8(b)(1)(A). These provisions contains not only the good-standing and ceased-work-in-industry restrictions in the former GAIU constitution but also a requirement that resignations be "upon approval of the Local Executive Boards without stating any objective standards for the approval. As held in *Register Publishing*, above, such a provision is invalid on its face, and although it is unenforceable, the Board has found that its mere maintenance restrains and coerces employees, who may be unaware of the provision's unenforceability, from exercising their Section 7 rights." (GCIU is not a party to this proceeding.)

B. Expulsions and Discharge Requests

The Union admits the allegations in the complaint that on September 21 it expelled the five individuals from membership for failing to tender union dues and assessments. The General Counsel contends that these expulsions violated Section 8(a)(1)(A) and (B), but I disagree. The Board has long held that "Expulsion from membership in a labor organization is a matter of internal union concern, and does not in and of itself give rise to a violation of the Act." *Teamsters Local 122 (August A. Busch & Co.)*, 203 NLRB 1041, 1042 (1973). The union notices to the individuals (G.C. Exh. 18) merely advised them of their expulsion from membership, without threatening to collect any of the past dues or to take any punitive action against them. I cannot believe that the expulsions, which merely carried out their attempts 4 months earlier to sever their membership in the Union, tended either to coerce the three employees in the exercise of their Section 7 rights or to coerce the Company in the selection of its representatives for adjustment of grievances. I therefore find that these 8(a)(1)(A) and (B) allegations must be dismissed.

The Union also admits that its agent, Financial Secretary Kenneth Hartmann, demanded in writing September 22 that the Company discharge the five individuals under the union-shop provisions in the collective-bargaining agreement that had expired April 30, but contends that this "was a clerical error which was fully rescinded in writing immediately" (Tr. 11-12).

The form letters, with the name of the individual and the date of expulsion filled in (G.C. Exh. 19), were addressed to Company President Alan Schneider (and not to the five individuals). The sending of the letters was an obvious blunder. The letters notified the Company of the expulsion for non-payment of dues and requested that the person be discharged in "accordance with Section 2.3 of our current labor agreements"—indicating on their face that it was the form routinely used to enforce the union-shop provisions in a current collective-bargaining agreement. It obviously had no application to employment at the Company, where a decertification election had been held and the employees had been working without a contract for nearly 5 months.

The five individuals soon learned that their jobs were not in jeopardy. Upon obtaining copies of the letters, they could

see that the form letters applied only to persons working under a "current labor agreement," and Schneider immediately spread the word "Not to worry about it."

Schneider referred the letters to his counsel, who reminded Hartmann in a letter dated September 27 that the collective-bargaining agreement had expired (G.C. Exh. 20). Hartmann immediately responded on October 4, writing the attorney a letter (G.C. Exh. 21)—which the Company posted on the bulletin board—confirming that Hartmann's September 22 letter was an "inadvertent error," that the Union had not intended to request that the expelled members be discharged, and that "we do not now make any such request."

At the trial the parties stipulated that "In January 1984, the Union learned during the NLRB investigation of the instant charges that the Charging Parties may have learned of the September 22, 1983 letters to the Companys" (G.C. Exh. 4, par. 10). Hartmann on January 10, 1984, had written letters to the five individuals (G.C. Exh. 22), with copies of his October 4 letter to the attorney attached, assuring them that the September 22 letters to the Company were an "unintentional error and that the Union had not intended to request their discharge."

The General Counsel argues that the 8(b)(1)(A) and 8(b)(2) allegations for demanding the discharge of the three employees and the 8(b)(1)(B) allegations for demanding the discharge of the two supervisors are not mooted by the Union's sending of the January 10 letters 3-1/2 months after the discharge demands because "the Union did not act promptly to dispel the coercion felt by the Charging Parties." I find, however, that Hartmann's September 22 letter did not tend to coerce the three employees or the Company in the meantime. As conceded by the General Counsel, the employees "were told not to worry about the demands," and as found above, it was obvious that the form discharge letters were sent in error, as confirmed in Hartmann's October 4 letter, which the Company posted on the bulletin board.

Although stipulating at the trial that the Union learned in January 1984 that the five individuals "may have learned" of the Union's September 22 letters to the Company, the General Counsel moves in her brief to amend the complaint to allege employee Richard Hvale to be an agent of the Union—apparently to argue that the Union distributed copies of the September 22 letters to the individuals and therefore should have notified each of them and not merely the company attorney that the letters were sent in error. (The General Counsel's explanation for the belated motion to amend the complaint is that the motion "could not have been made at the hearing due to the absence of a General Counsel"—although as approved in *Bonwit Teller, Inc. v. NLRB*, 197 F.2d 640, 644 (2d Cir. 1952), the hearing may proceed under Section 3(d) of the Act if (as here) before leaving the position, "the General Counsel had delegated to his representative at the hearing authority to prosecute the complaint.") I deny the motion as untimely.

The Union admits that "an inadvertent and technical violation of Section 8(b) (2) did occur." It contends, however, that the technical violation was "effectively cured" by the Union's prompt, followup action to assure the Company and the employees that its action was inadvertent and that no request for discharge was in fact being made.

After considering all the evidence, I find that the sending of the September 22 discharge requests was an obvious error,

that the Union acted promptly in nullifying the requests, that neither the employees nor the Company tended to be coerced by the obvious error, and that under these circumstances, any technical violation is cured and requires no remedy. I shall therefore dismiss the 8(b)(1) (A) and (B) and 8(b)(2) allegations.

CONCLUSIONS OF LAW

1. By refusing to accept valid resignations of employees and supervisors from union membership, the Union engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1) (A) and (B) and Section 2(6) and (7) of the Act.

2. By maintaining in its governing documents the first sentence of article XX, section 12 of the GCIU constitution, the Union violates Section 8(b)(1)(A).

3. The Union did not violate Section 8(b)(1)(A) and (B) by expelling employees and supervisors from union membership.

4. The Union did not commit any violation requiring a remedy when it made an obvious error, which it promptly corrected, in requesting the discharge of expelled members months after the collective-bargaining agreement and the union-security provisions had expired.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]