

International Union of Bricklayers and Allied Craftsmen, AFL-CIO, International Union of Bricklayers and Allied Craftsmen, District Council of Wisconsin, AFL-CIO and Daniel J. Titulaer. Cases 30-CB-2813 and 30-CB-2914

January 29, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On August 29, 1990, Administrative Law Judge Bernard Ries issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondents filed an answering brief.¹

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 and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.²

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The Respondents also filed a request for leave to submit a Division of Advice memorandum in Case 30-CB-3144, which they contend supports the judge's recommended dismissal of the complaint in this case. The General Counsel filed an opposition. Without need to rely on the Respondents' submission, we agree with the judge that the complaint should be dismissed and therefore find it unnecessary to rule on the request.

² Member Raudabaugh notes that the General Counsel did not contend that the amount of union dues, in the context of union-security and checkoff clauses, is a mandatory subject of bargaining. In the absence of such a contention, Member Raudabaugh does not pass on whether he agrees with the Board's current position that union dues, in the context of a union-security clause, is not a mandatory subject. See *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223 fn. 1 (1988), enf'd. 905 F.2d 476 (D.C. Cir. 1990).

Gerald McKinney, Esq., for the General Counsel.
Matthew R. Robbins, Esq. (Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C.), of Milwaukee, Wisconsin, and *Sarah Fox, Esq.*, of Washington, D.C., for the Respondents.

DECISION

BERNARD RIES, Administrative Law Judge. This matter was tried in Green Bay, Wisconsin, on January 30 and 31, 1990.

For reasons which will become evident, these cases have set no speed records in getting to this point. The charge in Case 30-CB-2813 was filed on December 11, 1987, and the complaint did not issue until August 9, 1988. The charge in 30-CB-2914, essentially a sequential extension of the first case, was filed on August 11, 1988, the complaint issued on September 19, 1988, and the cases were consolidated by an

order published the following day. On January 10, 1989, the hearing scheduled for January 17 was indefinitely postponed "pending resubmission of the matters to the Division of Advice" for the Office of the General Counsel. Thereafter, 8 more months passed before the hearing was, on September 14, 1989, reset for January 30, 1990, or in excess of 2 years from the filing of the first charge. On January 16, 1990, 2 weeks prior to the scheduled resumption, the Regional Director issued amendments to the consolidated complaints, changing, inter alia, the alleged identity of the exclusive bargaining representative involved in these matters.

Thus, more than 2 years passed from initial charge to hearing. Briefs were received from the General Counsel and the Respondents on April 4, 1990. While the issues presented here are difficult, one cannot help but feel that the administrative process has not lived up to its promise in this matter; I regret to say that the present decision may not add any lustre to the record made thus far.

The unusually complex problems raised by this proceeding suggest that the various issues can most usefully be indicated after the pertinent facts have been discussed. My findings of fact,¹ conclusions of law, and recommendation follow.

I. FACTUAL FINDINGS

Respondent International Union of Bricklayers and Allied Craftsmen, AFL-CIO (IU) has been functioning as a labor organization in the United States and Canada for many years. In the State of Wisconsin, as in other States, it has operated, probably always pursuant to Section 8(f) of the Act, through an unknown number of local unions and also through "district councils" which, under the IU constitution, may be created by the IU Executive Board from two or more locals in any geographical area determined by the Board. Under the most recent IU constitution in the record, a district council is at first composed of at least one "initial representative" from each constituent local, with each local delegation casting equal votes in number to its membership; the district council (operating under a constitution drawn up by itself or, failing that, by the IU Board) "shall negotiate agreements with employers covering work performed within the trade and geographic jurisdictions of the constituent Locals through a Negotiating Committee of at least three (3) of its members"

More than 15 years ago, all eight of the BAC locals having jurisdiction over various sections of the Fox River Valley area of Wisconsin were formed into a group called the "Fox River Valley Mason's Executive Committee." There can be little doubt that, although not at first called a "district council" (the earlier constitution may have had somewhat different provisions), the "Executive Committee" was the functional equivalent of what is now a district council; a letter from the committee to the Fox River Valley Contractors Association dated January 13, 1975, makes that quite clear. The letter notes that "all the Locals in the Fox River Valley have been formed into a District Council" to be known as the executive committee, and that "these Locals will negotiate one Labor Agreement for" 16 named counties, with the "bargaining committee" to be composed of "the three full time Business Agents and the President of the Council." The let-

¹ Errors in transcript have been noted and corrected.

ter requested a date to begin negotiations for a new labor agreement.²

In January 1983, after hearings, the IU Executive Board ordered a merger of the eight existing locals, leaving in existence Locals 3, 9, and 11; ordered certain restructuring of the District Council; and directed the District Council to “establish a uniform rate of dues to be paid by members throughout the three local unions and to review the current level of per capita payments to ensure that the District Council is properly financed in order to carry out the duties assigned to it.”

The earliest bargaining agreement entered into evidence (1985–1987) declares it to have been made by and between the “Fox River Valley Contractors Association” and “Fox River Valley Masons District Council of Wisconsin representing Wisconsin Local Unions #3, 9, 11 all of whom are affiliated with the International Union of Bricklayers and Allied Craftsmen, AFL–CIO [and a local of the Operative Plasterers International, which was dropped from the next contract] hereinafter referred to as the ‘Union’ or ‘Unions,’ for the employees represented by them, having jurisdiction as follows: [naming 17 counties].” For the succeeding contract (1987–1990), the members of the Fox River Valley Contractors Association decided to negotiate individually, but the foregoing paragraph remained virtually identical to the previous one, other than showing each employer signatory by its own name rather than subsumed within the Contractors Association.³

Of the two 1987 individually signed contracts in evidence, the one dated June 15, 1987, pertaining to Jacob C. Basten Construction Co., Inc., was signed “For the Union” by Clifford Heyrman, who identified himself in the document as “Business Manager BAC Local 3,” and the July 8, 1987 Oscar J. Boldt Construction Company contract by Ed Jeske, the business agent for Local 9, who simply referred to himself as “Business Representative.” Heyrman was paid by the executive committee from 1982 to 1984 and then served as the paid manager of Local 3 from 1984 until 1987.

On July 10, 1987, the IU Executive Board announced, by letters sent to all BAC locals in Wisconsin, its decision, pursuant to the constitution, to establish, effective August 1, a “statewide District Council of Wisconsin” (also referred to as a “State Administrative Unit”) composed of all BAC locals in Wisconsin.⁴ The purpose of creating the council was to “streamline union functions within the state” and achieve economies in the face of a declining membership. Leslie Strand, then business manager of Local 8, was appointed director of the new unit, with five other representatives from four locals, including Heyrman of Local 3, as the

initial executive committee. While each local was to “remain intact as a politically autonomous organization,” the District Council would “conduct the union’s administrative functions, with input from the affiliated local unions.” The letter also established a new dues structure for all the locals, according to which journeymen and others would pay a certain amount of monthly base dues and, in addition, journeymen would pay “hourly working dues in an amount equal to 1.75% of the total basic journeyman wage, including fringes, currently in force under the applicable collective bargaining agreement.” The new unit was not only to “handle all the routine administrative functions for the local unions throughout the state,” but also “all collective bargaining and contract enforcement functions on behalf of its affiliated local unions.” This new entity resulted in the dissolution of the Fox Valley District Council effective August 1, as well as in the demise of the “Wisconsin State Conference” (about which we know almost nothing).

Prior to the establishment of the District Council, the Fox River Council had been negotiating with various contractors for new contracts to replace the one expiring in June. At a meeting of the union membership on May 30, the purpose of which was to allow the membership to “ratify” the latest agreement between the employers and the Fox River Council, Cliff Heyrman stated that he had been directed by the IU to see that the new contracts contained dues-checkoff clauses, which had not been true of the previous contracts. He also presented to the members a clause which the IU had furnished (and as to which Heyrman’s testimony is in conflict regarding whether the contractors had rejected because of complaints from some of their employees).⁵

Daniel J. Titulaer, a member of Local 3 and the Charging Party here, testified that at the May 30 meeting, the “general consensus” of the members (the attendance, Titulaer guessed, was 115–130 members out of a combined three-local membership of about 300) was opposition to the concept of checkoff and a desire to have “the right to ratify it,” as well, evidently, as the right to vote on any dues increase. The employers were also proposing a controversial 20-percent decrease in wages and change of Sunday pay from overtime to straight time. The employees voted not to ratify the contract and to strike. They were on strike from June 1–15.

During this period, the negotiators met and tentatively agreed to a contract. Toward the end of the strike, a membership meeting of the three locals ratified the contract, which now contained both the clause contained in the preceding footnote and the following new clause which was drawn up

⁵ The clause was eventually accepted, as we shall see, and appears in the latest contracts as:

Section 5.1b The Employer shall deduct from the wages of each employee who has signed a checkoff authorization conforming to federal law, and transmit monthly to the Union (or to any agencies designated by said Union for the collection of such money), the sum for each hour paid which the Union has specified, or specifies from time to time and so advises the Employer in writing, as the portion of each employee’s Union dues to said Union, to its International Union, or to any other affiliate of the International Union, subject to checkoff. The sums transmitted shall be accompanied by a statement, in a form specified by the Union, reporting the name of each person whose dues are being paid and the number of hours each employee has been paid.

² The Fox River Valley “Executive Committee” constitution provided that the Committee “shall negotiate and consummate [sic] all trade agreements.” and that the “President and three B.A.’s shall negotiate [the] contract.”

³ The format of the individual agreements, for reasons unclear, continued to read in places like those of multiemployer associations, and several references were made to functions which were to be performed by the Contractors Association. E.g., G.C. Exh. 3, pp. 3, 8.

⁴ Executive Vice President John Flynn testified that a number of local leaders in Wisconsin had come to the IU soon after the 1985 convention to ask for the creation of a statewide unit. Thereafter, according to a letter in evidence which I have no reason to doubt, hearings on this issue were held throughout the State.

by Heyrman and accepted by the employers and, thereafter, the employee voters:

Section 5.1a Local Dues & Dues Checkoff. It is understood and mutually agreed that dues checkoff and local dues are subject to ratification by the members of the bargaining unit.

Upon ratification of dues checkoff the contract may be reopened at any time to initiate the amount ratified and such amount to be taken from the Base Rate at the time of ratification.

There never was any sort of subsequent ratification vote held by "the members of the bargaining unit."

It was following this series of events that the two contracts in evidence were signed (and, presumably, others) and then, in July, came the announcement of the formation of the statewide district council. The dues structure announced in the same letter increased the monthly dues for working journeymen in Local 3, or so the evidence suggests, from \$30 per month to perhaps \$70 or more.

In response to communications and rumors about the new District Council, Charging Party Titulaer arranged for a special meeting of Local 3 on July 29 (at which a few representatives of Locals 9 and 11 were also present). Some of the estimated 40-50 Local 3 members in attendance registered complaints about the District Council and the dues checkoff, and an ad hoc committee (called, simply, the "Executive Committee") was appointed to investigate the possibility of "going independent," among other things. The committee included the president, vice president, financial secretary, and treasurer of Local 3.

Another meeting was set for August 10, and in early August printed postcards were sent out to members of all 3 locals, "suggest[ing] it is in your best interest to postpone signing the dues checkoff cards" until the "informational meeting" was held on August 10. Letters on Local 3 stationery were also sent to contractors by the "Executive Committee" stating, in part, "Dues checkoff has not been ratified by the rank and file. It is in violation of our contract to subtract dues checkoff from our payroll checks."

On August 6, the IU wrote a letter placing Local 3 in trusteeship (or "receivership," as the IU constitution refers to it) for various reasons having to do with the conduct of the July 29 meeting. The trusteeship was implemented and, by letter of August 13, "all Fox River Valley Contractors" were notified by Leslie Strand, director of the new District Council, of the Council's formation and far-reaching authority; of the lack of significance of the communication about checkoff sent by an unauthorized group of BAC members; that "on a statewide basis dues check-off language is currently in place in 'B.A.C. Collective Bargaining Agreements' including those affiliate locals formerly referred to as the Fox River Valley Council"; and that the new Council would proceed "with a working dues assessment, the most reasonable being the dues checkoff," and checkoff authorization cards were being sent to all BAC members "urging compliance."

On September 5, 1987, a complaint was filed with the Secretary of Labor protesting the imposition of the trusteeship on Local 3. On April 17, 1989, the trusteeship having been rescinded in February of that year and an election of

Local 3 officers held in March, the Department closed the file without taking any action.

Daniel Titulaer adhered to the position that the failure to accomplish ratification of the dues increase, as set out in the contracts, meant that the Local 3 dues figure of \$30 per month had not been properly changed. He refused to pay more than that amount, and after several warnings and letters, the Union terminated his membership effective April 15, 1988, and, pursuant to the union-security clause in the contract, he was subsequently terminated by Basten Construction Co.

II. THE ESTABLISHMENT OF THE DISTRICT COUNCIL

The first substantive (and amended) complaint allegation is that Respondent IU violated Section 8(b)(1)(A) by establishing Respondent District Council to "supplant" BAC Local Union #3 as the "exclusive bargaining representative of the employees" in a unit composed of bricklayers and associated tradesmen employed by Basten Construction Co. It is the General Counsel's theory that prior to August 1, 1987, Local 3 was the exclusive bargaining agent of those employees (although, as indicated above, this theory came into being only 2 weeks prior to the hearing; before that, and since at least August 9, 1988, the Regional Director had believed that the Fox River Valley District Council had been the one true bargaining representative).⁶

Respondents argue, to the contrary, that the Fox River Valley Council was and had been the exclusive bargaining representative of the employees, and that this defect in the complaint allegation makes it fall of its own weight.

The question of precisely what organization served as "the" collective-bargaining agent of Fox River Valley employees is abstractly interesting. I assume that, prior to 1975, the locals engaged in individual bargaining. When the employers' association was notified in January 1975 that "all the Locals in the Fox River Valley have been formed into a District Council" and that these Locals will negotiate "one Labor Agreement" through a "bargaining committee" composed of three business agents (who serviced all eight Fox River locals) and the president of the council, it could be argued either that the locals were thereby indivisibly amalgamated into one labor organization for purposes of bargaining or, less likely, that they somehow retained exclusivity over their historic geographic portion of the Fox River Valley. The earliest bargaining agreement in evidence (1985-1987) does not give us a more definitive answer; as set out above, it states that the contract is made "by and between" the Contractors Association and the District Council "representing" the three locals "for the employees represented by them"; who "them" refers to is not explained; the grammar could mean that the reference is to the locals or to the locals and the council as joint representatives.

Since, after 1975, the Fox River Council was authorized to negotiate "one labor agreement" for all the locals, one might well conclude that the Council was the bargaining representative for each local, with the latter subordinately ad-

⁶The record does not indicate that there are any other pending charges challenging the "supplanting" of all the other Wisconsin locals by the new statewide district council.

ministering the contract as it applied to each of them.⁷ Whatever the correct resolution of this legal issue, it should be recalled that for 12 years prior to the outbreak of hostilities in 1987, the Fox River Valley locals never exclusively bargained for themselves, but rather surrendered their powers to a central council. It is therefore difficult to say, as does the complaint, that Respondent District Council “supplanted” Local 3 as the “exclusive bargaining representative” of the employees in August 1987.

The term “exclusive bargaining representative” is perhaps not, in the present context, the most appropriate phrase. As the parties have stipulated, the locals involved have been at all times granted recognition under Section 8(f) of the Act, the provision which allows building industry employers to, *inter alia*, enter into agreements with unions which do not necessarily represent a majority of their employees. Apparently because of this exception to the majoritarian principle espoused by Section 9(a) of the Act, the Board has seemingly been willing to allow unions relatively free play in 8(f) settings to realign and restructure intraunion relationships. In *Associated General Contractors*, 182 NLRB 224, 225 (1970), a case on which Respondents strongly rely and which General Counsel assiduously seeks to distinguish, the Board, discussing a situation in which an International union transferred jurisdiction over millwrights from Local 90 to Local 1080 at the request of the contractors’ association, stated:

In our opinion the shift in recognition in this case, prompted by the International’s jurisdictional determination, was not sufficiently offensive to employee interests to warrant Board intervention. In the construction industry, where the instant dispute arises, the onsite craftsmen are not members of a fixed and stable work force having an identity with a specific employer. They look to the hiring halls maintained by unions, rather than employers, for work opportunities. They are highly organized and rarely are involved in Board-conducted elections. Representation rights customarily accrue to the “referring” union. There are important practical business reasons for employers in the industry to accommodate their labor relations practices to the practices of the Unions operating in the industry.

These are among the considerations that bear on statutory bargaining conceptions as they apply to this industry. Congress has given light to these considerations by enacting 8(f) which makes prehire agreements lawful for this industry despite the fact they run counter to provisions of other sections of the Act.

In this case the contracts negotiated between the AGC and Locals 90 and 1080, though not of the type specifically privileged under Section 8(f), see *Bricklayers, Local No. 3*, 162 NLRB 476 [(1966)], and also *Dallas Building and Construction Trades Council*, 164 NLRB 938 [(1967)], are basically prehire in nature with respect to future projects. Thus, the effect, basically, of AGC’s shift in recognition will result in little more than

a shift in the source of labor for these projects. Requests for millwrights will be directed to the hiring hall administered by Local 1080 rather than Local 90. As there is no evidence that Local 1080 has operated or will operate its hiring facilities on other than a non-discriminatory basis, without preference for union membership, we must assume that qualified millwrights working out of Local 90 will receive the same job opportunities as those historically working within the jurisdiction of Local 1080.

In these circumstances, and as there is no evidence or suggestion that the International’s action was motivated by considerations other than the fostering of efficient industrial conditions, we are not persuaded that the record establishes that AGC, by recognizing Local 1080, engaged in conduct having a sufficiently detrimental effect upon employee interests to warrant a refusal to bargain finding. For similar reasons, we disagree with the Trial Examiner’s finding that Local 1080 violated Section 8(b)(1)(A) by accepting recognition and executing a contract with AGC. Accordingly, we shall dismiss the complaint in its entirety.

It will be noticed that the Board did not conduct a “continuity of identity” inquiry in this analysis, as it might be expected to do. See *NLRB v. Financial Institution Employees*, 475 U.S. 192, 199–200 (1986). The fact that the Board was considering an 8(f) situation rather than an 9(a) relationship seems to account for that. Even though it is true that *John Deklawa & Sons*, 282 NLRB 1375 (1987), has now afforded “limited exclusive representative status” (*Kamdor Plumbing Corp.*, 299 NLRB No. 18, slip op. at 3 (July 26, 1990)) to building industry unions during periods in which contracts are in effect, *Deklawa & Sons*, *supra* at 1385, the Board also recognizes that the “limitation” on the exclusivity it has adopted as a policy measure is necessary because 8(f) contracts, by definition, are, unlike 9(a) recognition, not based on a majority choice by employees as required by Section 9(a). Thus, where Section 8(f) is the foundation of the relationship, and the employees have made no *choice* of an exclusive bargaining representative, a change in the nature or identity of that representative becomes of slight consequence.

Even if continuity of identity were significant here, it is less than clear that a meaningful change occurred when the Wisconsin State District Council was instituted in 1987. Local 3 had already been subordinated, 12 years earlier, to the Fox River Council, which had been composed of eight, and later three, locals. From what evidence there is in the record, neither Local 3 nor any of the affiliated locals had exercised any substantial authority during that entire period. The forced affiliation of all of the Wisconsin locals into one unit has not been shown to have adversely affected whatever “autonomy” remained to Local 3.

I accordingly conclude that even if Local 3 is considered to have been, *vis-a-vis* the Fox River Valley District Council, *the* bargaining representative of all bricklayers employed by contractors who had signed bargaining contracts and who came to work in Local 3’s area of the Fox River Valley, the “supplanting” of Local 3 by the Wisconsin State District Council effective August 1, 1987, did not violate Section 8(b)(1)(A). See *Southern Stevedoring Co.*, 230 NLRB 609, 613 (1977).

⁷ An undated copy of the constitution of Local 3 (and, at that time, Local 26) provided that “[n]egotiations shall be conducted in accord with the provisions in the Constitution of the District Council,” by a committee composed of the three business agents and the president of the council, which “shall take such final and binding actions as in its sole discretion are in the best interests of the membership.”

III. THE RECEIVERSHIP

The complaint next alleges that Respondent IU violated Section 8(b)(1)(A) when it placed Local 3 in receivership on August 6, 1987, "because members of said union opposed Respondent's actions."

General Counsel argues that the "reason" for the trusteeship was that "Local 3 refused to agree to the checkoff of the higher dues and their remittance to Respondent District Council as part of Respondent International's transfer of Local 3's representative status to Respondent District Council." Some background information is in order.

At the 1983 meeting of the IU General Board, there was considered at length a task force report on adoption of a revised dues structure to "cope with the fiscal problems facing our union," the membership of which had seriously declined. It was decided that the most equitable system was one under which all members would pay base dues, and working members would, in addition, pay an extra percentage based upon the number of hours which they worked. It was further concluded that the intricacies of "working dues" would be such that collection of these dues would be "feasible only through employer deductions under a check-off system." The Board decided that locals which did not have a checkoff provision in their contracts "must make every effort to negotiate one." The relationship of the checkoff clause to the "working dues" system was considered so significant that members of locals which had not been able to negotiate checkoff would continue to pay fixed dues, while those with checkoff would pay lesser base amounts plus a fraction of "the average national hourly wage package for each hour of employment." It appears that dues were (or were perceived to be) considerably lower under this system for those bargaining units without checkoff clauses. Presumably because of this perception, and, as noted, to make the structure "feasible," the IU set a goal of every local and affiliate negotiating a checkoff clause by 1990 (recognizing, of course, that every employer might not agree to such a provision).

Although the testimony is confusing on this subject, and the briefs do not discuss it at all, it is this background—a fear of higher dues for working journeymen—which evidently led Charging Party Titulaer and other members of Local 3 to mount an opposition in June 1977 to a dues checkoff clause, an otherwise seemingly innocuous provision generally preferred by unionists.⁸

As set out earlier, Titulaer arranged a special meeting of Local 3 on July 29, attended by about 50 members (of an estimated total (by Heyrman) of 165 active members). On August 6, the IU president wrote a letter stating that he had been informed that at the July 29 meeting, "the Local and its officers decided to refuse to pay the Local's assessment, to block the implementation of the dues check-off provision in the Local's collective bargaining agreement, to advocate that members refuse to sign dues check-off authorization cards, and to discuss the possibility of disaffiliation from this

⁸Under union-security contracts, employees must pay initiation dues and fees to satisfy the union-security clause. Whether they pay automatically, by authorizing deduction from their pay, or whether they pay in person out of their own pockets, would ordinarily seem a matter of little moment. In this case, however, the higher dues imposed by virtue of the existence of a checkoff clause at the local level made a meaningful difference.

International Union. The clear intent of these actions is to interfere with the implementation of the newly established District Council of Wisconsin. Therefore, in order to prevent interference with the operation of the District Council of Wisconsin, to assure the performance of the lawful directives of the IU Executive Board, and to forestall and prevent the conduct of the Local's affairs in such a manner as to jeopardize the interests of the International Union and its affiliates, IU Vice President Noble B. Cain is hereby appointed as receiver with full powers over the affairs of Local 3." After a subsequent hearing, the receivership was continued.

It appears that the evidence supports, in general, the IU's understanding of the events of July 29. Titulaer testified that the Local 3 membership present (which included four officers) was not "happy with . . . how they were taking us over and merging us—getting us into dues checkoff." Notes made by Clifford Heyrman show that "no one stood up" when asked who favored dues checkoff. Vice President Badeau said that he thought the "whole plan was illegal because it was violating a signed contract." Titulaer at one point testified that at the meeting, "people were saying" that "Local 3 and the members did not want this reorganization. We were getting it shoved down our throats." Although he later replied "no" to the question whether any of the members said anything "to indicate that they wanted to prevent the State reorganization," the latter denial is rather difficult to accept. An "executive committee" was appointed to "see what legal rights we had on fighting them taking away Local 3's autonomy legally from the inside" (having allegedly decided that "you can't fight an organization such as the Union from the outside."). Notes taken by Heyrman state that Vice President Badeau made a motion, seconded by Titulaer, to appoint a committee to hire a hall and call a "special meeting in the Valley of all locals as soon as possible," with a "suggestion not to sign dues checkoff cards until after that meeting." An amendment was made by a member, seconded by financial secretary, Clark, and passed, "to discuss at that meeting the possibility of going independent." Heyrman's notes also show that President Champeau commented that a special assessment levied on the locals' treasuries in connection with setting up the District Council would not be paid "at this time" and would "be discussed" at the meeting of August 12.

On brief, General Counsel cites no cases in support of the allegation that the IU violated Section 8(b)(1)(A) by imposing a trusteeship on Local 3. Respondent's brief argues (1) that a trusteeship is an internal union matter, not subject to Board jurisdiction; (2) that the imposition of the trusteeship here was pursuant to the broad authority granted the IU president by the union constitution; and that after an investigation under Title III of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 461–466, the Labor Department did not challenge the trusteeship.

The Board has held that intraunion policy and political conflicts may be protected by Section 7 of the Act, even though they may also come within the purview of the freedom of speech and assembly guaranteed by the Landrum-Griffin Act. *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1 (1972); *Jacobs Transfer*, 201 NLRB 210, 218–219 (1973); *Operating Engineers Local 400*, 225 NLRB 596 (1976). It also may be, due to the proviso to Section 8(b)(1)(A) ("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”) that the proviso “extends some protection to union conduct that would otherwise fall within the prohibition against restraint or coercion in the exercise of Section 7 rights.” *Helton v. NLRB*, 656 F.2d 883, 893 (D.C. Cir. 1981). The limitations on such union rules, as enunciated by the Supreme Court in *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), are that the rule must be “properly adopted,” “reflects a legitimate union interest,” “impairs no policy Congress has imbedded in the labor laws,” and is “reasonably enforced against union members who are free to leave the union and escape the rule.”

In determining the validity of the trusteeship imposed here, it seems appropriate to consider Section 302 of the LMRDA (29 U.S.C. § 462), which describes the parameters within which trusteeships may be created:

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or otherwise carrying out the legitimate objects of such labor organization.

There is no claim here that the IU failed to act in accordance with its constitution in imposing the trusteeship. Nor do I think it can be said that the “purpose” of the trusteeship was not a good-faith effort to “carry [] out the legitimate objects” of the IU, as it conceived them to be. The efficiency and economy contemplated by the establishment of the Wisconsin District Council, by the creation of a new dues structure, and by the perceived supporting need of checkoff provisions were well within a sensible range of action, and it reasonably appeared that the actions that Local 3 officers and members were taking, and threatening to take, probably using and/or seizing the assets of that local, were designed to inhibit and thwart neutral and legitimate IU policies. *Letter Carriers v. Sombrotto*, 449 F.2d 915, 923 (2d Cir. 1971) (“Although § 1203(c) [of the Postal Reorganization Act] protects the rights of employees or labor organizations to seek a new bargaining representative when they have become dissatisfied with the existing one, it does not necessarily mean that they are immune from discipline by the parent body as provided in the union constitution. The union is entitled to protect itself, and actions taken toward this end appear to be directed toward a ‘legitimate object’ within the meaning of 29 U.S.C. 462.”); *Executive Board Local 1302 v. Carpenters*, 477 F.2d 612, 615 (2d Cir. 1973) (in case of disaffiliation attempt by local from council, trusteeship properly imposed “to prevent the destruction of the bargaining unit and to preserve the status of the bargaining representative.”)

In response to a complaint filed on September 5, 1987, by a member of Local 3, the Department of Labor did not get around to taking action until April 17, 1989, 2 months after the trusteeship had been rescinded. In its letter closing the file for mootness, however, the Department stated, “It appeared from the initial investigation that the trusteeship had

been imposed for an allowable purpose under Section 302 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 462.” It does, in fact, seem that the trusteeship was valid under the LMRDA. It may, however, also be argued that the activities which induced the trusteeship are, according to the Board precedent cited above, protected from discipline.

I do not find it easy to reconcile the two lines of precedent. However, since Congress has established a specific standard for assessing the propriety of trusteeships, and since I conclude that Respondent IU instituted this receivership for bona fide and statutorily acceptable purposes of protecting and fostering official positions espoused by the IU and of preventing loss of Local 3 assets, it is my conclusion that the Union should not be held to have trespassed on 8(b)(1)(A) rights. As the Board has held that it is “charged with considering the full panoply of congressional labor policies in determining the legality of a union fine,” *Carpenters Local 22 (Graziano Construction)*, supra, 195 NLRB at 2, it would seem that the Board must respect a trusteeship established pursuant to congressional guidelines under the LMRDA. See *Price v. NLRB*, 373 F.2d 443 (9th Cir. 1967).

IV. THE ALLEGEDLY UNLAWFUL INCREASE IN DUES

The complaint alleges that Respondent District Council unlawfully increased dues of members of, “inter alia, BAC Local Union #3” on or about August 13, 1987, without following the ratification procedure set forth in section 5.1(a) of the bargaining agreement, quoted above.

Actually, it was in the letter of July 10 to all BAC locals in Wisconsin that IU President Joyce announced the formation of the State District Council effective August 1, informed the members that the IU would be making a “substantial loan” and assessing each local’s treasury \$16 per member for startup costs, and explained in detail the “initial District Council dues structure” that had been established. General Counsel does not question the calculation or procedure by which the new dues system was arrived at (other, I suppose, than the unexpressed but logical claim that, the creation of the District Council having allegedly been unlawful, the dues change should also fail); specifically, he states only that “Respondents violated Section 8(b)(1)(A) when they increased the dues without the employees’ consent as provided in the collective-bargaining agreement.”

Respondents argue on brief that section 5.1(a) of the agreement does not apply because it only provides for ratification of *local* dues, a distinction which, it is asserted, was implicitly recognized in section 5.1(b) (which refers to “dues to said union, to its International Union, or to any other affiliate of the International Union”) and which had existed prior to the reorganization as well. Finally, Respondent seems to contend that the failure to conduct a rank-and-file ratification amounted to an amendment of the agreement which amendment the District Council was empowered to negotiate. Neither side cites any cases relating to a contractually retained power of employees to ratify a portion of the contract in order to give it finality.

Bargaining history leads me to think that the word “local” may mean less than appears here, since the clause which the Union originally proffered for inclusion in the agreement, and which now appears as section 5.1(b), was labelled in the proposal as “Check-off and Local Dues”

even though it clearly was aimed at a wider target. On the other hand, I would not rely upon the rather spontaneous testimony of Heyrman on the meaning of "local" as used in section 5.1(a), and it may be that the parties to the contract used the term in its normal connotation. One point made by Respondent which is not easy to answer is that it is inconceivable that the contracts intended to reserve the right for each "bargaining unit" not only to fix dues for the units represented by the locals, but also for the Fox River Valley Council, the Wisconsin State Conference, and the International Union.

On that assumption, the failure to afford the "members of the bargaining unit" (presumably on an employer-by-employer basis, as opposed to ratification by Local 3 in its entirety) the right to ratify "local" dues cannot be shown on this record to have coerced or restrained employees, because there is no clear evidence that "local" dues were changed for Local 3 as a result of the establishment of the State District Council.

It seems plain, moreover, that the amount of dues is a permissive, not a mandatory, subject of bargaining, in that it is an internal union affair which does not "vitally affect" the "wages, hours, and other terms and conditions of employment" about which Section 8(a)(5) requires bargaining. *Chemical Workers Local 1 v. Pittsburgh Glass Co.*, 404 U.S. 157, 179 (1971); *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223 fn. 1 (1988), enf. 905 F.2d 476 (D.C. Cir. 1990). Even when parties have successfully bargained about a permissive subject, a party may reject the bargain without violating Section 8(a)(5). *Chemical Workers*, supra at 187-188. If the Union had a right under the act to unilaterally modify the contract in this respect, its failure to afford a ratification vote to employees would not seem to be capable of violating Section 8(b)(1)(a).

In any event, a contractual promise to let employees in the bargaining units ratify dues increases would appear to run afoul of both the union constitution and the gloss put on it by experience. There is no evidence that rank-and-file members have ever ratified contracts in the past, and no explanation of why, in 1987, "ratification" meetings were held. Nowhere in the constitution is there any provision for ratification of collective-bargaining agreements, or parts thereof, by the membership of either locals or district councils.⁹ Evidence submitted by Respondent shows that in 1977 and 1981, attempts were made at the national convention to amend the constitution to require submission of proposed agreements "to a vote of the membership of the Local Union for approval"; these efforts failed.

Whether this analysis is useful, I am not sure. The union members are not authorized to ratify contractual provisions, but if their negotiating committee cedes them the right to do so, and the employer signs a contract based upon that condition, is the union estopped from disregarding the self-imposed ratification requirement? One answer is that we have

⁹As to local unions, art. VIII N. (1) and (2) provide that each local "not affiliated with a District Council" shall establish a Negotiating Committee, and "[t]he formulation of the collective agreement shall be the work of the Negotiating Committee." According to art. IX B, "The District Council shall negotiate agreements with employers covering work performed within the trade and geographic jurisdictions of the constituent Locals through a Negotiating Committee of at least three of its members."

heard of no complaint from any employer about this matter. Signatory employers would have the right to waive the invocation of any estoppel to which they might be entitled, and the record indicates that, in fact, dues increases and dues checkoffs are being honored by employers. Furthermore, since, as discussed, the amount of dues is a permissive bargaining subject, it would appear that the Union is free to unilaterally modify the provision without violating the Act, whether or not it has promised ratification to "members of the bargaining units."¹⁰

I reach the conclusion that the failure to afford ratification of dues increases (the complaint make no reference to check-off) did not violate Section 8(b)(1)(A). It should nonetheless be pointed out that a serious question exists as to the legality of the dues change. Article IX ("District Council") of the constitution makes no provision for the IU to initially set dues for the District Council; it states, instead, that within 120 days after their first meeting, the initial representatives of the Council shall "forward a District Council Constitution" covering a number of specified topics, including "the method of financing the Council and of paying its expenses," after which the Executive Board shall "approve or modify the same in its discretion." Only if the District Council fails to do so does the Board "have the authority to promulgate a Constitution to regulate the affairs of the District Council." In the present case, however, the IU purported to establish the "initial District Council dues structure" in its letter of July 10, 1987.

General Counsel has not addressed this apparent discrepancy, either in the complaint or on brief. There may be more here than meets the eye; an internal grievance or appeal might have been filed and the correct procedure thereafter followed. Since it is impossible to say that the issue has been fully litigated, I shall not concern myself further with the potential implications under the NLRA of failing to comply with this constitutional procedure.

V. THE OCTOBER MEETING

The complaint alleges that IU representatives, in October 1987, "threatened employees that they would be discharged from their jobs at the request of Respondents unless they paid the increased dues" The IU, in the belief that "some of the problems in Local 3 may be the result of inadequate communication," held a meeting for the membership in October, at which Executive Vice President John Flynn and Noble Cain, both an International vice president and the receiver for Local 3, made a presentation. With respect to the statement alleged in the complaint, both Flynn and Charging Party Titulaer basically gave the same testimony—that Flynn told the members that if they did not pay the increased dues, they could have their membership terminated, which could lead to termination of employment.¹¹ Although General

¹⁰As already noted, it is difficult to envision how ratification on such a basis would work.

¹¹I discredit Titulaer's testimony (from which he appeared to recede as time passed and which, in any event, is not intended by the complaint to undergird a violation, see Tr. 15-17) that Flynn said that if employees did not sign checkoff cards, they would be "kicked out." I also credit Flynn with regard to remarks he made about death benefits, but I see no need to extend this already protracted decision by discussing a subject which is neither alleged to

Continued

Counsel attacks Flynn's credibility, sub silentio he seems to accept that the only issue is the legal one of whether it was unlawful for Flynn to tell the members that they could ultimately be discharged unless they paid the increased dues. He contends that the statement was violative because the dues increase had not been ratified by the membership. Since I have already found against General Counsel on the validity of the increase despite the absence of ratification, I conclude that the remarks made by Flynn were not unlawful.

VI. THE DISCHARGE OF TITULAER

Finally, the consolidated cases allege that Respondents violated the Act by sending letters in April, May, and June 1988, seeking the discharge of Titulaer because he refused to pay the increased dues, and by ultimately causing Titulaer's discharge of June 17, 1988, for that reason.

The evidence indicates (although not definitively) that Titulaer continued to pay the previous amount of dues after August 1, 1987. He was notified by letter on January 6, 1988, that he was delinquent and notified verbally and by letter thereafter that he would be dropped from membership and terminated if he did not make good. After further correspondence with Titulaer and his employer, the council canceled his membership and eventually convinced his employer

be violative (after two submissions to the Advice Division of the General Counsel) nor was in fact, on my findings, violative. To the extent that Champeau's testimony supports that of Titulaer, I also credit Flynn.

to terminate his employment under the union-security provision, effective June 14, 1988.

General Counsel submits that the threats of discharge and, of course, the discharge itself, were violative of the Act because the bargaining unit was not allowed to vote on dues in accordance with section 5.1(a) of the contract, and the dues demanded were, accordingly, invalid in amount. My earlier discussion of the point dictates a rejection of this contention. So far as the record shows, Titulaer was not treated discriminatorily and was the only member of the Union who was terminated for failure to pay his increased dues. It appears that he holds in his own pocket the key to reemployment in this industry and locality; if he should pay a reinstatement fee and the increased dues, he will be entitled to work under the contracts (assuming they were renewed substantially intact after their expiration in May 1990).

In accordance with the foregoing discussion, I shall recommend dismissal of this allegation.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The complaints in Cases 30-CB-2813 and 30-CB-2914 are dismissed.

¹²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.