

Laborers' International Union of North America, Local 652, AFL-CIO (Southern California Contractors' Association) and Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez. Case 21-CB-11718

November 22, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The issue presented here is whether the judge correctly found that the Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act by discriminatorily filing and prosecuting internal disciplinary charges against employee-members in retaliation for their intraunion opposition to the Respondent's officials.¹ 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,² and conclusions,³ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laborers' International Union of North America, Local 652, AFL-CIO, Santa Ana, California, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ On June 29, 1995, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

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

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951).

³ Member Browning notes that the Respondent has not excepted to the judge's implicit conclusion that a violation of Sec. 8(b)(1)(A) can be premised on a union's imposition of internal union discipline that does not affect the employment relationship, that is based on conduct related solely to internal union affairs, and does not arise from the employment relationship.

Salvador Sanders, Esq., for the General Counsel.
Julius Mel Reich, Esq., for the Respondent.
Francisca N. Araiza, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried in Los Angeles, California, on January 19,

319 NLRB No. 92

1995,¹ pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 21 on July 7, 1994, and which is based on charges filed by Francisca N. Araiza (attorney for the Charging Parties) and by the Charging Parties (first amended charge) on March 31 and on April 26, 1994, respectively. The complaint alleges that Laborers' International Union of North America, Local 652, AFL-CIO (Respondent) had engaged in certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act).

Issues

Whether Respondent filed internal disciplinary charges against the Charging Parties and subsequently prosecuted the disciplinary charges against the Charging Parties at a hearing before a "Special Hearings Panel" in retaliation for the Charging Parties' intraunion opposition to Respondent's officials.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, the Charging Parties, and Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. BOARD'S JURISDICTION

Respondent admits that for all times material to this case, it was a party to a collective-bargaining agreement with the Southern California Contractors' Association, Inc., an association comprised of various employers, with principal offices and places of business within the State of California, which employer-members are engaged in the building and construction industry in southern California.

Respondent further admits that the collective-bargaining agreement referred to above covers employees of the employer-members of the Association, performing laborers' craft work within the geographical jurisdiction of Respondent.

Respondent further admits, and I find, that the Association and its employer-members and each of them have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*²

1. Statement of the case

All agree that on September 2, as a result of certain alleged misconduct occurring at the Respondent's regular membership meeting held on August 25, Respondent's presi-

¹ All dates refer to 1993 unless otherwise indicated.

² The General Counsel's unopposed motion to correct transcript is granted.

dent, Paul Sandoval, filed charges against Albert Castillo, et al., here, alleging the parties violated certain provisions of the constitution of the Laborers' International Union of North America, AFL-CIO (Jt. Exhs. 1, 2). All further agree that on November 18, as a result of certain alleged misconduct occurring at Respondent's regular membership meeting held on November 17, Sandoval filed additional charges against Castillo, et al., again alleging violations of the International constitution referred to above. (Jt. Exh. 3.)

Subsequent to the filing of these charges, all seven members of Respondent's executive board recused themselves from participation in the discipline process. As a result, on April 28, 1994, a special hearing panel, appointed by the International Union was convened. Castillo, et al. and their counsel, Francisco Araiza, were given notice, appeared, and were afforded a full opportunity to contest the charges. At the conclusion of the hearing, the special hearing panel (Chuck Barnes, president of the International, possibly from Washington State and John Serpico, third vice president of International, possibly from Illinois) recommended that Albert Castillo and Antonio Lopez be found guilty of certain violations of the International constitution. Castillo was also found not guilty of certain other charges. Remaining Charging Parties were found not guilty of all charges due to insufficient evidence. As punishment for Castillo and Antonio Lopez, the panel recommended they be suspended from attending the next local union meeting following receipt of this decision.

On August 24, 1994, the general executive board of the Laborers' International Union of North America approved and adapted the findings and recommendations of the special hearings panels (Jt. Exh. 4).

Respondent contends first that I am legally bound to defer to the decision of the special hearings panel, so long as there is some evidence to support it and, second, that there is ample evidence to support it. Alternatively, if I consider the instant case on its merits, Respondent contends there is ample evidence to support this report or to otherwise justify dismissal, the General Counsel argues that I am not bound by the panel report referred to above, but must consider the evidence de novo, at least to the extent presented here. Before reaching these important legal issues, certain background information will be helpful.

2. Respondent and its incumbent officials

Respondent labor organization has approximately 4000 members of which about 70 percent are Latinos. During Respondent's monthly general membership meetings only about 200-300 members are likely to attend. The attendance, however, doubles for the November and December meeting when Respondent customarily distributes to those in attendance a \$25 gift certificate. For the November meeting, one of two at issue in this case, Respondent did not distribute the \$25 certificates due to financial considerations. For the same reason no certificate was distributed at the December meeting which wasn't even held; instead its business was combined with the January 1994 meeting.

Respondent's sole witness was Paul Sandoval, a salaried business agent for Respondent, and for the past 8 years, Respondent's elected president. Sandoval serves with and is a member of Respondent's executive board consisting of six other elected officials. One of these persons is the business

manager, Marcelino Duarte, who despite playing a significant role in the case did not testify. Sandoval and other incumbents were last elected in a contested election held in June.

3. Dissident faction

In the last election several competing slates ran unsuccessfully against the incumbents. One of these groups supporting an opposing slate is a group called by one witness, testifying through an interpreter as, "United Workers by Justice and Democracy." (Tr. 69.) Other witnesses referred to the group as "Laborers United for Justice and Democracy." (Tr. 82.) I will refer to this group as Laborers United. The witnesses called by the General Counsel in his case-in-chief and in rebuttal belonged to Laborers United; in some cases, the witnesses are officers. For example, Antonio Lopez is president, and Albert Castillo is vice president. Approximately 50-60 members of Respondent belong to Laborers United. Besides officers, Laborers United has business cards (G.C. Exh. 4),³ holds regular monthly meeting separate from Respondent's general membership meetings, ran a slate of candidates opposing the incumbents, and prepared and distributed campaign material in support of its slate. As noted above, Laborers United was not successful in the last election.

For the past several years since Laborers United was founded, its members customarily sit on the right side of the union hall, as one faces the stage where the incumbent officers are located. Supporters of the incumbents typically sit on the left side and many other members of Respondent choose to stand in the back of the hall. Between the two sections of seating is a floor microphone so that persons recognized by Sandoval may speak and be heard. (See rough diagram of union hall prepared by Castillo. G.C. Exh. 2.)

4. Format of monthly union meetings

On the third Wednesday of each month (except for November and December when the time may be changed due to the holidays) at 7:30 p.m., Respondent holds its monthly meetings for the general membership.⁴ Sandoval, as president, presides. The order of business begins with a roll call of officers, reading of minutes from the prior meeting (subject to members claiming they never said what was attributed to them); there follows communications and bills, executive board report, unfinished business and new business, business manager's report, financial report, and good and welfare.⁵ For every order of business, someone must make a motion

³Prior to the June election and possibly at the February meeting, Castillo was recognized by Sandoval during a portion of the meeting called "good and welfare." At this time, Castillo told the persons attending the meeting about Laborers United, in part, explaining, that the organization was formed a few years before for the purpose of bringing justice and democracy to the labor union. Castillo also passed out Laborers United business cards to Respondent's members who were present, including giving one to Sandoval. To all of this, Castillo's remarks and the passing out of the business cards, Sandoval said nothing.

⁴Respondent also holds monthly executive board meetings days before the general membership. These meetings are limited to executive board members and are not in issue in this case.

⁵"Good and Welfare" is an order of business where members can bring concerns to the floor on any topic which the chair considers relevant to the way the Local is functioning. This subject includes criticism of the Local or of its members.

to approve, someone else must second, then a period is open to the floor for questions or for people to speak for or against the issue.

During some meetings, all does not proceed smoothly. A member may speak without being recognized or, if recognized, may speak on a topic irrelevant to the order of business for which recognized. On other occasions, members might interrupt a speaker, make cat-calls, or otherwise cause disruption or disorder. A meeting may also be disrupted by a member speaking in Spanish when someone else is speaking in English. In any event, it is up to Sandoval, as chair, to attempt to restore order. While the General Counsel's witnesses did not agree that it works this way for everyone, according to Sandoval, he just explains to a disorderly person what the problem is, then he rules the person out of order and tells the person to take his seat. If these repeated warnings to a particular individual do not work, Sandoval tells the offender to leave the hall, before the meeting can resume. For particularly obstinate cases, Sandoval might call on the sergeant-at-arms, Lew Jenkins, who did not testify, but who is described as 6 feet 4 inches and 240 pounds. Jenkins' job is to persuade the member to leave without any physical touching, so as to avoid a confrontation. As a last resort, the meeting is adjourned and police are called.

5. Prior disruptions

As already noted, two union meetings are in direct issue in this case, August 25 and November 17, and I will turn to them below. The conflicts in testimony about the events during those meetings, however, must be considered in light of certain background information presented by Respondent. With respect to Albert Castillo, the General Counsel's witness here, the evidence shows that on April 29, 1990, Sandoval filed charges against Castillo accusing him of disrupting a monthly meeting. As is true in the instant case, a local union trial board was impaneled to hear evidence with respect to these charges and sustained Sandoval's charges. Thereafter, Castillo appealed the decision to the general executive board of the Laborers' International Union which ultimately approved the findings and recommendation of the western hearing panel. As punishment Castillo was fined \$25 and suspended from attending four consecutive membership meetings. (R. Exh. 2.)

My attention is also directed to the case of *Duarte v. Castillo*, Case 705402, an action filed in the Superior Court of Orange County, California, and resulting in an order after hearing on petition for injunction prohibiting harassment. In this order, Castillo was ordered by the state court judge to, inter alia, stay at least 200 yards away from Duarte, Duarte's residence, Duarte's children's school and stay at least 10 yards away from Duarte's place of work, with an exception for any NLRB hearing. The court order is dated March 10, and is to remain in effect for 3 years. (R. Exh. 3.) In his testimony, Castillo complained that the court order was issued because Castillo lacked legal counsel at hearing and that both the Union's finding against him and the court order resulted from events where Duarte assaulted Castillo. I place little credence in any of this testimony.

Castillo, however, provided other testimony which I note was not completely rebutted by Respondent with respect to Sandoval's alleged practice of condoning violations of the Union's constitution during membership meetings when the

perpetrator was a member of Sandoval's faction. According to Castillo, at a January or February meeting, Castillo had been duly recognized by Sandoval and was contending that the June election should require voters to walk in rather than mail in ballots on the grounds that only an election where a voter who walks in and shows his union ID card as a prerequisite to voting would be an election free of fraud. As Castillo was speaking, a member named Tony Billamar who had been appointed by Sandoval to be union auditor interrupted Castillo, and told him to "shut up and sit down stupid!" According to Castillo, Sandoval never ruled Billamar out of order, nor asked him to leave the meeting. Sandoval testified that after Billamar had been appointed auditor, Castillo was recognized during the good and welfare and referred to Billamar as a "Coward" and an "ignorant fool" because he didn't know how to read and write, and that he was a "disgrace to the local union." To all of this, Billamar, who was seated on the stage next to Sandoval, said only "sit down." Sandoval responded that Billamar was not in order, as he had spoken without being recognized.⁶

Antonio Lopez testified that between January and August, certain union members spoke at meetings without being recognized, but were never told they were out of order. (Tr. 59.) No specific names, however, were given.

6. August 25 meeting

Toward the beginning of the meeting, Sandoval called for a motion to approve the minutes of the past meeting. At this point, Crispin Perez, a member of Laborers United and rebuttal witness for the General Counsel, rose to raise a question regarding why a member of Respondent's executive board named Leroy Woodard, who did not testify, had been excused from attending Respondent's executive board and membership meetings and regarding whether Respondent was paying disability benefits to Woodard. According to Sandoval, he responded to Perez' inquiry by saying that he should bring the matter up during good and welfare where Sandoval would rule whether it was a proper inquiry. As Perez was returning to his seat, Antonio Lopez shouted in Spanish from the floor, "Answer the Man's question." To this, Sandoval replied either, "who said that," or "what did you say." Lopez identified himself as the person who made the remark and Sandoval directed him to take his seat as he was out of order. According to Lopez, Sandoval immediately called Jenkins who directed Lopez to be removed from the hall. At this point, some persons at the meeting, apparently from the right side, began yelling, "Why does he have to leave?" Castillo stood up, and said, that he challenged the decision of the chair. Sandoval recalled that Castillo stood up and directly challenged him by saying, "Why don't you throw me out too?" Moments later, according to Sandoval, Castillo added, "You are going to have to get us out of here physically." In rebuttal, Castillo was called back by the General Counsel to deny making the remarks attributed to him by Sandoval.

After reviewing the transcript of the intraunion hearing, (R. Exh. 4) and comparing the testimony there to that given in the instant case, I credit Sandoval in part as to the remarks made by Lopez and Castillo. On the other hand, I do not be-

⁶Billamar was never called as a witness.

lieve Sandoval that he gave a series of warnings and admonitions before ordering ejection of Lopez.

All agree that neither Lopez nor Castillo left the meeting and consistent with Sandoval's policy, Jenkins did not attempt to force them to leave. Instead, Sandoval directed that the police be called which was done. After several minutes, while the meeting was suspended, Sandoval directed that the police be called a second time. This time it was reported that the police had been there and found nothing amiss. There was a question as to whether the police were willing to return. At this point, Sandoval adjourned the meeting.

7. November 17 meeting

As reported above, the executive board did not recommend prior to this meeting that the \$25 gift certificates be distributed to the 600 or more members in attendance. Duarte, the business manager, was giving his report where apparently for the first time, the membership learned that the gift certificates would not be distributed.

According to the General Counsel's witnesses, Duarte had added to his formal report, words to the effect that the opposition has caused him trouble, taking up his time so he was unable to attend to his business. At this time Castillo rose to make a point of order, saying, according to Sandoval, "You're politicking. We are opposed to your backdoor policies." According to Castillo, he spoke to Sandoval saying, "You are allowing the business manager to get political which isn't right." Both Castillo and Sandoval agree that Castillo was ruled out of order, and asked to leave the hall. When Castillo refused to leave, Sandoval adjourned the meeting.

The members of the executive board then went into a side office. Castillo and Jose Lopez followed the group there and talked to Billamar who was part of the gathering in the office. Then Castillo was referred to Sandoval in a smaller office. The latter told Castillo that he adjourned the meeting because Castillo had been out of line and Sandoval asked him again to leave the hall.

B. Analysis and Conclusions

1. Adverse inferences

At page 33 of his brief, the General Counsel urges me to draw an adverse inference from Respondent's failure to call Durate as a witness. An adverse inference is properly drawn regarding any matter about which a witness is likely to have knowledge, if a party fails to call that witness to support its position and if the witness may reasonably be assumed to be favorably disposed to the party. *Grimway Farms*, 314 NLRB 73 fn. 2 (1994). By this standard, I find that Respondent's failure to call not only Duarte, its business manager, but also Billamar, its appointed auditor, permits me to draw adverse inferences which I do and weigh against Respondent in this case.

2. Respondent as proper party

At pages 2 and 3 of its brief, Respondent contends that Sandoval, acting in his individual capacity, rather than as president of Respondent, filed the charges. Accordingly, Respondent contends that it should not be held responsible for Sandoval's conduct. I reject this contention. In *Mine Workers*

Local 1058 (Beth Energy), 299 NLRB 389, 389-390 (1990), the Board stated,⁷

The Board regularly finds elected or appointed officers of an organization to be agents of that organization. Although the holding of elective office does not mandate a finding of agency per se, it is persuasive and substantial evidence that will be decisive in the absence of compelling contrary evidence. [Citation omitted.] We find no compelling contrary evidence here.

At footnote 7, page 390, the Board added, whether their members had actually authorized the officers' action is not determinative for Section 2(13) of the Act provides: "In determining whether any person acted as agent . . . the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

In the instant case, I note that on November 18, Armando Exparza, "Recording Secretary," wrote a letter to Arthur A. Coia, general president of the Laborers' International which reads in pertinent part,

Please be advised that I am filing additional charges against the above listed member [Ruben Gomez] under Article VII, Meetings, Section 6 of the Uniform Local Union Constitution.

. . . .

/s/ Armando "Mando" Esparza
Recording Secretary
[Jt. Exh. 3.]

The original charges for both the August 25 and the November 17 meetings were filed by "Paul C. Sandoval President of Laborers Local 652" and signed by him in that capacity. (Jt. Exhs. 2 and 3.) Based on this evidence and the lack of "compelling contrary evidence offered by Respondent, I find that Sandoval was acting as agent of Respondent when he filed the charges against Castillo, et al.

3. Respondent's legal defense

Respondent initially took the position in this case that it should be exonerated of all charges as a matter of law. In support of this claim, Respondent filed a prehearing brief. (R. Exh. 1.) I took the issue under advisement and, thereafter, as the hearing progressed, Respondent carefully preserved its record, making certain that no claim of waiver could reasonably be made. In its posthearing brief, Respondent again raises the same issue which is now squarely presented for decision and I turn to do just that.

Based on certain authorities, such as *Boilermakers v. Hardeman*, 401 U.S. 233, 246 (1971), and *Ritz v. O'Donnell*, 566 F.2d 731, 736-737 (D.C. Cir. 1977), Respondent contends that a union trial body's decision on intraunion charges will be upheld by the courts so long as there is "some evidence" to support the decision. Both of these cases were decided pursuant to the Labor-Management Reporting and Dis-

⁷ Respondent relies on *NLRB v. United Mine Workers Local 1058*, 957 F.2d 149 (4th Cir. 1992), which refused to enforce the Board's decision cited above. As an administrative law judge, I am bound by the Board's decision unless and until such decision is reversed by the U.S. Supreme Court. *Iowa Beef Packers*, 144 NLRB 615, 616-617 (1963).

closure Act (LMRDA) which provides in relevant part that a union member who charges that his union violated his rights under Title 1 of the Act may bring a civil action against the union in a U.S. district court. The critical issue presented by the complaint in *Hardeman* was whether the union disciplinary proceedings had denied him a full and fair hearing within the meaning of Section 101(a)(5)(c), 29 U.S.C. § 411 (a)(5). The Court held in the case that the cause of action was not within the exclusive competence of the NLRB. (401 U.S. at 238.) The Court also held that the guarantee provided union members by LMRDA requires the charging party at the union disciplinary proceeding to provide “some evidence” at the disciplinary hearing to support the charges made. (401 U.S. at 246.)

Professor Gorman, *Basic Text on Labor Law*, 684–685 (1976), explains the proper role of the LMRDA in a Board proceeding:

The Landrum-Griffin Act, or the Labor-Management Reporting and Disclosure Act of 1959, declares that all union members are to have the right to vote and be eligible for office in union elections, to meet and freely express views with other members and to speak out on issues before the union at formal meetings. (29 U.S.C.A. §§ 411, 412, 481.) It is unlawful under these sections for a union to discipline a member for speaking against union policies, *Cole v. Hall* [462 F.2d 777] (2d Cir. 1972), *affd. on other issues* [412 U.S. 1] (U.S. 1973), or against particular candidates for union office, *Retail Clerks Local 648 v. Retail Clerks Int’l Ass’n*. [299 F.Supp 1012] (D.D.C. 1969). Although these Landrum-Griffin policies are not directly enforceable by the National Labor Relations Board, the Board has recently held that it would take them into account and strike down as in violation of section 8(b)(1)(A) a fine which was imposed on a member who sought to compete against an incumbent union official in running for the position of delegate to the international convention. In *Carpenters Local 22 (Graziano Constr. Co.)*, [195 NLRB 1] [1972], the Board stated [p. 2]

[T]he Board is charged with considering the full panoply of congressional labor policies in determining the legality of a union fine. Here the Union, in the guise of enforcing internal discipline, has sought to deprive its members of the right, as guaranteed by the Labor-Management Reporting and Disclosure Act, to participate fully and freely in the internal affairs of his own union. A fine for that purpose not only in our opinion fails to reflect a legitimate union interest but rather in fact impairs a policy that Congress has imbedded in the labor laws.

The Board held that in spite of the differentiation between its own jurisdiction and the powers of the Labor Department to enforce the LMRDA union-election provision, it was obligated, in determining legitimacy of union interests, to look not just to the NLRB but to “take into account all Federal policies.”

Based on the above-cited authority, I find no threshold bar to the charges here, but instead find support for the General

Counsel’s prima facie case based on provision of the LMRDA.⁸

4. The General Counsel’s prima facie case

Respondent is charged with violating Section 8(b)(1)(A) of the Act which provides:

(b) 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 [section 157 of this title]: *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

Section 7 (Sec. 157) reads as follows:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

The Charging Parties were charged by the Respondent with violations of its constitution. (Jt. Exh. 1.) To explain the limitations of Section 8(b)(1)(A) on a union’s enforcement of its constitution, I turn to I Hardin, *The Developing Labor Law* 176 (3d ed. 1992).

d. *Discipline for Intraunion Activity* Although section 8(b)(1)(A) “leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest and impairs no policy Congress has imbedded in the labor laws,” it does not permit enforcement by fine or expulsion of a rule that invades or frustrates an overriding policy of the labor laws.⁶⁰³ A union may not, under the guise of enforcing internal discipline, deprive its members of the right to participate fully and freely in the internal affairs of their own union⁶⁰⁴ Thus, a union fine levied on a member because of his intraunion activities in opposition to incumbent union officials was held to be a violation of section 8(b)(1)(A).⁶⁰⁵ In another case, a local union that

⁸ Respondent also cited the case of *Steelworkers (Stran Steel)*, 239 NLRB 374 (1978), in support of its bar contention. I find that case may be distinguished on its facts. As proof of discriminatory motivation, the General Counsel in that case relied on procedural errors occurring in the union’s processing of the alleged discriminatees appeal and the lack of merit in the charges. (239 NLRB at 380.) Thus the General Counsel placed the merit of the charges in direct issue. This is a far cry from Respondent’s argument that the merit of the charges are automatically in issue by operation of law, a contention I reject. See *Operating Engineers Local 139 (AGC of Wisconsin)*, 273 NLRB 992 fn. 2 (1984), *enfd.* 796 F.2d 985 (7th Cir. 1986), where the Union’s International executive board sustained the appeal, but the Board nevertheless affirmed the violations.

brought charges against and fined a member who circulated a newsletter critical of the local's leadership was found to have violated the Act notwithstanding that the union's international executive board reversed the conviction and fine.⁶⁰⁶ The internal union charge was held to be an element in a pattern of harassment of a union dissident that continued after the appeal to the international was sustained.

⁶⁰³ See text at *supra* note 571.

⁶⁰⁴ *Carpenters Local 22 (Graziano Constr. Co.)*, 195 NLRB 1, 79 LRRM 1194 (1972).

⁶⁰⁵ *Id.* See also *Helton v. NLRB*, 656 F.2d 883, 107 LRRM 2819 (CA DC, 1981), *granting review to* 248 NLRB 83, 103 LRRM 1318 (1980).

⁶⁰⁶ *Operating Eng'rs. Local 139 (Associated Gen. Contractors of Am., Wisconsin Chapter)*, 273 NLRB 992, 118 LRRM 1396 (1984), *enforced*, 796 F.2d 985, 123 LRRM 2021 (CA, 1986); see also *Machinists Dist. 91, Local Lodge 707 (United Technologies Corp., Pratt & Whitney Div.)*, 278 NLRB 39, 122 LRRM 1336 (1986), *enforced*, 817 F.2d 235, 125 LRRM 2335 (CA 2, 1987).

Based on the above authorities, I find that the General Counsel has established a prima facie case. That is, Castillo, et al., constitute a portion of a dissident group working against the interests of the incumbent administration. The dissident group's activities were protected not only by Section 7 of the Act, but also under Title 1 of the LMRDA, the "Bill of Rights" for union members." "Section 101(a)(2) of that statute, 29 U.S.C. § 411(a)(2) (1976), provides that '[e]very member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions[.]' Congress intended this free speech right to parallel the rights conferred under the First Amendment; it hoped to secure union democracy by establishing a right to express dissenting views without fear of discipline. The LMRDA was in part 'designed to protect the rights of union members to discuss freely and [to] criticize the management of their unions and conduct of their officers.'" "[T]he right of free speech has been described as 'almost absolute.'" *Helton v. NLRB*, *supra*, 656 F.2d at 895-896.

5. Wright Line analyses

It is appropriate for cases alleging conduct in violation of Section 8(b)(1)(A) to turn to a *Wright Line*⁹ analysis. *Letter Carriers (Postal Service)*, 315 NLRB 1176, 1177 fn. 7 (1994). This is particularly true where, as here, it is asserted that there was a legitimate basis for union discipline. *Sheet Metal Workers Local 104 (Brisco Sheet Metal)*, 311 NLRB 99, 105 (1993). In sum, the issue is whether or not Respondent acted with discriminatory motivation. For the reasons stated below, I find that Respondent did discriminate against Castillo, et al. and therefore violated the Act as alleged.

First, I weigh the adverse inferences found above by Respondent's failure to call Duarte and Billamar as witnesses.¹⁰

⁹ 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 489 (1982).

¹⁰ Duarte's absence as a witness is particularly damaging to Respondent's case since he attended both meetings and it was he at the November 17 meeting who was allegedly interrupted just as he was attempting to link Respondent's serious political problems at not having the \$25 gift certificates to conduct by the opposition.

Next, I note the un rebutted evidence of the General Counsel's witnesses that other persons who were not members of United Laborers were permitted to speak out of turn, to interrupt and insult other witnesses, and to otherwise cause disturbances during general membership meetings with impunity.

In some cases, Sandoval was less than certain that Castillo had caused the disruption in issue. For example as to the August 25 meeting, Sandoval "assumed" it was Castillo who yelled, "you're going to have to get us out of here physically." (Tr. 236.)

Finally, I credit the General Counsel's witnesses who testified that with respect to United Laborers, Sandoval failed to give repeated warnings to alleged offenders before ordering that they be ejected from the hall and before Sandoval filed the charges at issue in this case. Sandoval's failure to follow the policies and practices of progressive warnings where it was members of United Laborers allegedly causing disruption is telling indeed.

In light of the above, I find Respondent violated the Act as alleged. See *Pacific Mountain Express Co.*, 215 NLRB 588, 599 (1974); *Wenner Ford Tractor Rentals*, 315 NLRB 964, 964-965 (1994). In sum, Respondent has failed to demonstrate that Sandoval would have brought charges against Castillo, et al. absent their concerted activities protected by Section 7 of the Act, that is, their right not only to support a dissident slate of candidates, but to question and oppose the incumbent officers at Respondent's monthly membership meetings.

CONCLUSIONS OF LAW

1. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

2. By filing intraunion charges against members Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez because they were members of a dissident faction which opposed incumbent union officials in an internal union election and which questions and opposes policies of the incumbent officials, Respondent has violated Section 8(b)(1)(A) of the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and(7) of the Act.

REMEDY

Having found that the Respondent Local has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall further recommend that Respondent Local be ordered to notify Laborers' International Union of North America that the local is withdrawing the charges that it filed against Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez and is removing from its files any records that it may have of the charges and will notify Castillo, Caribay, A. Lopes, J. Lopez, and Perez in writing that this action has been taken.

I shall also recommend that Respondent be ordered to prepare the personal notices to Castillo, et al. and to post appropriate notices in both English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issued the following recommended¹¹

ORDER

The Respondent, Laborers' International Union of North America, Local 652, AFL-CIO, Santa Ana, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Filing intraunion charges against members because they are a member of a dissident faction which opposed incumbent union officials in an internal union election and which questions and opposes policies of the incumbent officials.

(b) In any like or related manner restraining or coercing members 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) Immediately notify Laborers' International Union of North American, AFL-CIO that it has withdrawn charges filed against Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez with respect to events occurring at the general membership meetings of August 25 and November 17, 1993.

(b) Remove from its files all records of the charges and rescind all disciplinary findings against Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez with respect to events occurring at the general membership meetings of August 25 and November 17 and notify them in writing in English and Spanish that this action has been taken.

(c) Post at its business offices and other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by Regional Director for Region 21 after

¹¹ If 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.

¹² 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."

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.

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

APPENDIX

NOTICE TO 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 file intraunion charges against members because they are a member of a dissident faction which opposed incumbent union officials in an internal union election and because they question and oppose policies of the incumbent officials.

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 notify Laborers' International Union of North America AFL-CIO that we have withdrawn the charges filed against Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez.

WE WILL remove from our files all records of the charges and rescind all disciplinary findings made against Albert Castillo, Guillermo Garibay, Antonio Lopez, Jose Manuel Lopez, and Crispin Perez with respect to events occurring at the general membership meetings of August 23 and November 17, 1993.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 652, AFL-CIO