United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 4, 1999

TO: Paul Eggert, Regional Director
Region 19

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Inlandboatmen's Union
Cases 19-CB-8229, et al.

536-2545-1500
536-2548
536-2553
536-2557
536-2571
536-2581-3314
536-2581-3370-0150
518-4030-1408
518-4090-4900

These cases were submitted for advice regarding (1) whether Beck[1] should apply to exclusive hiring hall fees charged of nonmember users, (2) whether the Union is obligated to provide information relating to hiring hall fees to nonmember users, (3) whether the Union operated the hiring hall in a discriminatory manner, and (4) whether the Union and Employer unlawfully deducted nonmember hiring hall fees without written authorization.

FACTS

A. Operation of the Hiring Hall

For many years, the International Longshoremen's and Warehousemen's Union ("ILWU") and the Inlandboatment's Union of the Pacific, Marine Division of the ILWU ("IBU"), on behalf of its Alaska locals, have negotiated a statewide collective-bargaining agreement ("CBA") with the Alaska Longshore Employer's Association ("ALEA") and signatory employers, including North Star Terminal & Stevedore Co. ("North Star").

The most recent CBA ("1996 CBA") continues the Alaska longshore industry's use of two general classes of longshoremen: registered and casuals. Registered longshoremen "have been regularly employed in the industry"[2]

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[1] Communication Workers v. Beck, 487 U.S. 735 (1988).

[2] 1996 CBA, Section 20.12.

and obtained registration based on seniority or sustained active service.[3] Casual longshoremen are not registered. Registered longshoremen receive priority in referrals from the hiring hall.[4] Since 1993, registered longshoremen have received higher wages and wage increases, while casuals' pay has remained the same.[5] Registered longshoremen also receive certain benefits unavailable to casuals[6] and they are required to work fewer hours for eligibility other benefits.[7]

Pursuant to the 1996 CBA, a joint ILWU-ALEA committee (the Joint Port Labor Relations Committee or "JPLRC") has the power to make additions to the longshore registration list. Although there are no established criteria for determining which longshoremen are selected, the JPLRC must consider projected work opportunities in the port.

The hiring hall for the Port of Homer is operated by ILWU Local 200 ("Union"). In Homer, there are 7 registered longshoremen who are all Union members, and from 6-20 casual longshoremen who are not members of the Union. Some casuals have worked for over 10 years in Homer. Since 1989, no Homer longshoremen have been elevated from casual to registered status. In 1996, Local 200 recommended that three casuals become registered, but they were never elevated because one employer, North Star, opposed their

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[3] Id., Section 20.13.

[4] "No casual worker shall be dispatched when there is any man on the registered list . . . qualified, ready and willing to do the work" and registered men may bump casual men. 1996 CBA, Sections 2.82, 20.31-32.

[5] In 1993, the CBA increased registered longshoremen's pay while cutting the pay of casuals.

[6] E.g., paid vacation and Mechanization & Modernization Fund ("M&M") benefits. Id., Sections 5.1 and 14.32-.6, Letter of Understanding No. 9.

[7] Registered longshoremen are entitled to health and welfare benefits if they work 400 hours per year, while casuals must work 1,000 hours per year for eligibility. All Alaska Longshore Health & Welfare Trust at 6,8 (incorporated by reference into the 1996 CBA).

change in status due to the low average number of hours worked by existing registered longshoremen.

The 1996 CBA's union security clause covers only registered longshoremen, requiring them to become and remain union members in good standing as a condition of employment within 30 days of obtaining registered status.[8] The contract is silent with respect to whether casuals may join the Union; however, the IBU Constitution prohibits casuals from becoming Union members.[9] Nonmembers may use the hiring hall only if they pay their "pro rata share of the expenses related to the dispatch hall, the Labor Relations Committee, etc.," as set by the JPLRC.

In practice, the Union collects hiring hall fees as set forth in the IBU Constitution: registered longshoremen pay 2% of gross wages (up to a maximum of $600 annually),[10] while nonmember casual longshoremen pay 1.3% of gross wages (up to a maximum of $600 annually).[11] The Union has collected Union dues and casual hiring hall fees through payroll deductions. However, there is no evidence that any casual authorized the deductions. Further, one casual

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[8] Id., Section 2.0.

[9] Article 7 B Alaska Longshore Dues, Section B Membership of the IBU Constitution provides as follows (emphasis added):

(1) Registered longshoremen shall be members and entitled to be candidates for any office and vote on election of officers, National and Regional referendums.
(2) Casual longshoremen are not members and shall not be entitled to be candidates for office or vote on elections of officers, National and Regional referendums.
(3) When a Casual longshoremen [sic] becomes a registered longshoremen [sic], he shall be entitled to be a candidate for any office and vote on the election of officers, National and Regional referendums.

[10] They also pay $40 monthly dues, plus a $19 initiation fee. IBU Constitution, Articles 7B and 7C.

[11] Id. Typically, casuals earn no more than $10,000 per year.

requested an accounting of the Union's hiring hall fees, but the Union refused to provide any information.

Finally, the 1996 CBA requires that any modifications to the contractual work rules be in writing.[12]

ACTION

We conclude that the Region should issue complaint, absent settlement, alleging that the Union breached its duty of fair representation in violation of Section 8(b)(1)(A) and (2) of the Act by failing to provide a nonmember casual an accounting of its hiring hall fees in response to a request for such information. We also conclude that Beck has no application to hiring hall fees and that the hiring hall was not operated in a discriminatory manner. [*FOIA Exemption 5*

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The Region should also issue complaint, absent settlement, against the Union and North Star alleging violation of Sections 8(b)(1)(A) and (2) and 8(a)(1), (2) and (3), respectively, for accepting hiring hall fees that were deducted without prior written employee authorization.

A. Hiring Hall Fees and Beck

We conclude that unions may charge nonmembers not covered by a union security clause only for the actual cost of operating the hiring hall; all other financial obligations for use of the hiring hall, including institutional and representational costs, are excessive and unlawful. If a nonmember hiring hall user is covered by a union security clause, the union has an obligation to provide certain dues notices and information,[13] and is

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[12] 1996 CBA, Sections 10.1, 11.11. We note that one of the charging parties has alleged that the Union maintains unwritten local work rules, specifically that it requires employers to pay more than the contractually mandated wages for "let-go" work performed primarily by registered employees, while not requiring employers to pay the contractually mandated overtime and penalty overtime for casuals. It is unclear whether the Region has investigated this allegation and intends to dismiss it for lack of evidence.

[13] See Paperworkers, Local 1033 (Weyerhauser), 320 NLRB 349, 350 (1996) (unions must provide notice of right to resign from union membership prior to obligating employees to pay

permitted, pursuant to the proviso to Section 8(a)(3), to require the payment of representational costs as a condition of employment. However, if the nonmember hiring hall user is not covered by a union security clause, or has been denied union membership for reasons unrelated to nonpayment of dues and fees, then it is unlawful to require the nonmember hiring hall user to pay for representational costs.

1. Extant Board Excessive Fee Hiring Hall Case Law

It is well established that "a union is free to charge individuals referred for employment [through a hiring hall] a fee reasonably related to the value of the service provided."[14] In other words, the hiring hall fee must represent the nonmembers' pro rata share of the cost of operating the hiring hall.[15]

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dues pursuant to union security clause), enf. denied, 126 F.3d 788 (6th Cir. 1997), rev'd, 119 S. Ct. 47 (1998) 442 (1998); California Saw and Knife Works, 320 NLRB 224, 231 (1995) enfd., sub nom. IAM v. NLRB, 133 F.3d 1012 (7th Cir. 1997), cert. denied sub nom. Strang v. NLRB, 119 S. Ct. 47 (1998) (union has an obligation to notify bargaining unit employees of their Beck rights prior to subjecting them to obligations under the union security clause).

[14] Communication Workers Local 22 (Pittsburgh Press), 304 NLRB 868, 868 (1991) (quoting Hagerty Ct. II, see infra at n.16)(finding that no fees could lawfully be collected because the referral system was not valid); accord Teamsters Local 667 (Spector Freight System), 248 NLRB 260, 260 (1980), enf'd, 654 F.2d 254 (6th Cir. 1981); Coal Producers' Association, 165 NLRB 337, 338 (1967); Robinson Bay Lock Constructors, 123 NLRB 12, 23-25 (1959), enf. denied in part, 275 F.2d 914 (2d Cir. 1960) (refusing to enforce Board order requiring reimbursement of member dues), cert. denied, 366 U.S. 909 (1961).

[15] Morrison-Knudsen Co., 291 NLRB 250, 251 (1988); IATSE, Local 640 (Associated Independent Theatre Co.), 185 NLRB 552, 558 (1970); Local 825, Operating Engineers (Homan), 137 NLRB 1043, 1044 (1962)(contract specified that nonmembers would pay a pro rata amount of the hiring hall expenses).

In Hagerty II,[16] the Board agreed with the General Counsel's formulation of "an acceptable method" for determining the types of expenditures which lawfully may be charged to nonmembers for use of the hiring hall.[17] Specifically, the union was held to be entitled to collect "all union expenses except those which are 'institutional' in character; i.e., expenses incurred by the Union as an organization rather than in the course of making or policing collective bargaining agreements."[18] Thus, the union was allowed to keep hiring hall fees that related to expenses incurred because of its role as a collective bargaining agent.[19] Although the ALJ adopted the General Counsel's suggested approach, the ALJ expressly noted that

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[16] J.J. Hagerty, 153 NLRB 1375, 1377 (1965)("Hagerty II"), (on remand from 321 F.2d 130 (2d Cir. 1963) ("Hagerty Ct. I"), denying enforcement of 139 NLRB 633 (1962) ("Hagerty I")), enf'd, 385 F.2d 874 (2d Cir. 1967) ("Hagerty Ct. II"), cert. denied, 391 U.S. 904 (1968).

[17] The Union never contested the General Counsel's formula, although it maintained on remand (contrary to the circuit court's determination, 321 F.2d at 135) that it was entitled to charge nonmembers full dues. Id. at 1378. The ALJ and the Board reluctantly agreed with the General Counsel's determination. Id. at 1377, 1379-80. The Board wrote that:

> We have considered the various items found by the Trial Examiner to be properly chargeable to the operation of the hiring hall and the policing of existing contracts, and, without necessarily endorsing the classification of each and every item, we find that the formula urged by the General Counsel and adopted by the Trial Examiner is an acceptable method of determining the costs chargeable to the permit men for the use of the hiring hall.

Id. at 1377.

[18] Hagerty II, 153 NLRB at 1379.

[19] Id.

the union was entitled only to expenses which related to the union's services as an employment agency.[20]

> The other services the Union renders permit men are services it renders as their statutory bargaining representative, and as to this permit men are "free riders," (*The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A.H. Bull Steamship Company) v. N.L.R.B.*, 347 U.S. 17, 41), as the Union had no union-security clause in its contract which would have required nonmembers to pay the equivalent of dues in return for the Union's services.[21]

In Homan,[22] the Board adopted a discretionary rule that it would not process a general allegation of excessive nonmember hiring hall fees where nonmember fees were "roughly equivalent" to union membership dues, and where there was no evidence that the hiring hall was operated discriminatorily.

> The fact that the fee paid by a nonmember is roughly equivalent to the monthly dues of a member is not, in our opinion, sufficient in and of itself to establish that the former has been required to pay more than his fair share for the use and operation of the hiring hall.[23]

The Board continues to apply the "rough equivalency" of hiring hall fees and dues standard in assessing whether hiring hall fees are excessive.[24]

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[20] Id. at 1380.

[21] Id.

[22] 137 NLRB at 1044. In Homan, union members paid $10 per month, $1.10 of which went to the International, while nonmembers paid $9 per month.

[23] Id.

[24] See Morrison-Knudsen, 291 NLRB at 251 (prima facie case made out where nonmember hiring hall fees were double the amount of dues paid by union members, where there was no discrimination alleged); IATSE, 185 NLRB at 558-59 (Board dismissed charge of excessive hiring hall fees where union's admittedly "less-than-rigorous" accounting figures indicated that over 2-year period union collected more

In sum, under Hagerty II unions may charge nonmember hiring hall users for representational expenses so long as there is no blanket discrimination in the operation of the hiring hall. Moreover, under Homan, as a matter of practice unions may charge nonmember hiring hall users fees which include representational as well as union institutional expenses without inviting a Board challenge, so long as these fees are "roughly equivalent" to union dues and the hiring hall is not operated in a discriminatory manner.[25]

2. Post-Hagerty Decisions Relating to Nonmember Objectors

Subsequent to Hagerty II and Homan, the Supreme Court and the Board have held that in certain circumstances unions may not compel nonmembers to pay full union dues as a condition of employment, even though the nonmembers are subject to a union security clause requiring union membership as a condition of employment. In General Motors,[26] the Supreme Court held that employment conditioned on membership, for purposes of Section 8(a)(3), requires only "payment of initiation fees and monthly dues," not actual union membership. According to the Court, "[m]embership" as a condition of employment is whittled down to its financial core."

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hiring hall fees that it had expenses, as Board found no evidence of discriminatory operation of the hiring hall and it surmised that "over a more representative period of years, the assessment and their proper allocations would be equalized"); Coal Producers', 165 NLRB at 338-39 (service fee of $1.45 per month plus 1% of benefits for prior employees who participated in union benefit plans was reasonably related to the value of services rendered by the union to members, who paid $.75 per month plus 2% of pay).

[25] Under Hagerty I, 139 NLRB at 636-37, if a union discriminates against nonmember hiring hall users based on their union membership, then the union may not collect any fee.

[26] NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963).

Subsequently, in Beck,[27] the Court held that, with respect to nonmember bargaining unit members covered by a union security clause who object to paying for the expenditure of funds for nonrepresentational activities (i.e., activities unrelated to collective bargaining, contract administration, or grievance adjustment), such employees may not be compelled to pay full union dues as a condition of employment. Instead, the "financial core" amount that they may be charged is limited to representational expenses.[28] According to the Court, unions which have negotiated a union security clause need not tolerate "free riders" (employees who receive the benefits of union representation but refuse to pay their fair share of the costs of representation). Such employees must pay for the union's representational services; they just cannot be compelled to pay for the nonrepresentational expenses.[29] According to the Board, unions must prorate their expenses between representational and nonrepresentational activities for nonmember objectors who are covered by a union security clause.[30]

More recently, the Board held that there is another exception to the requirement that employees covered by a union security clause pay union dues as a condition of employment. In Johnson Controls,[31] the Board held that where a union terminates a bargaining unit employee's union membership for a reason other than failure to tender dues and fees, the union may not then insist, pursuant to the union security clause, that the employee remit union dues and fees as a condition of continued employment. On the other hand, a union may lawfully seek the discharge of a bargaining unit employee who is denied union membership because the employee declines to pay union dues and fees.[32]

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[27] 487 U.S. at 760.

[28] Id. at 752-54. See California Saw, 320 NLRB at 224 (applying Beck).

[29] Id. at 750.

[30] California Saw, 320 NLRB at 231, 237-39.

[31] Transportation Workers Local 525 (Johnson Controls World Services), 326 NLRB No. 3 (July 31, 1998), slip op. at 1-2.

[32] Id., slip op. at 2.

3. The Hiring Hall Excessive Fee Cases are Incompatible with Recent Board and Supreme Court Decisions

In light of the decisions described above, we conclude that it is inappropriate to continue to rely upon Hagerty, Homan and their progeny for determining whether nonmember hiring hall fees are excessive. While Beck and Johnson Controls do not involve hiring halls in the absence of a union security clause, they do confirm that (as the ALJ noted in Hagerty II) nonmember hiring hall users are "free riders" with respect to the union's representational services where there is no union security clause requiring nonmembers to pay the equivalent of dues in return for the union's services, or where the union denies membership for reasons other than failure to pay union fees and dues.

Specifically, Hagerty II's holding that unions may charge nonmember hiring hall users representational expenses, and Homan's holding that hiring hall fees may be "roughly equivalent" to union dues (which include representational expenses), are incompatible with the statutory scheme of the proviso to Section 8(a)(3) as evidenced by the Supreme Court's decision in Beck. Further, Johnson Controls prohibits a union from compelling payment of any union dues -- even despite a union security clause obligation -- where the union has denied membership for reasons unrelated to the employee's refusal to tender union dues and fees. Therefore, it is clearly unlawful for unions to require nonmember hiring hall users, who are not subject to union membership as a condition of employment, to be charged an amount equivalent to union dues where they have been denied union membership for reasons unrelated to payment of union dues and fees.

Despite our reliance on Beck and Johnson Controls to support our position that the Board's extant standard for determining whether nonmember hiring hall fees are excessive is no longer appropriate, we do not find that Beck and its progeny should be substituted for hiring hall fee law. As the Board emphasized in California Saw,[33] Beck obligations arise solely in the context of union security obligations pursuant to Section 8(a)(3). As the ALJ noted in Hagerty II, the Supreme Court held in Radio Officers that a union security clause is the exclusive method devised by Congress if unions wish to prevent "free riders"

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[33] California Saw and Knife Works, 320 NLRB at 224-28.

who receive union representation without paying for it.[34] If an employee is not covered by a union security clause, Beck is not applicable to the fees charged by the hiring hall.

In sum, we conclude that unions may charge nonmembers only for the actual cost of operating the hiring hall where (a) the nonmembers are not covered by a union security clause or, alternatively, (b) union membership has been denied for reasons unrelated to nonpayment of dues and fees. Charges for other activities would be excessive and therefore unlawful. We would urge the Board to explicitly state that Hagerty II, Homan, and other excessive fee hiring hall cases have been so modified by subsequent Board and Supreme Court decisions.

[FOIA Exemption 5

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B. Denial of Information Request Concerning Hiring Hall Fees

In Northeastern State Boilermaker Employers,[35] the Board reaffirmed that "a union's duty of fair representation includes the obligation to provide access to job referral lists to determine whether . . . referral rights are being protected." Consequently, a union violates Section 8(b)(1)(A)

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[34] Radio Officers' Union v. NLRB, 347 U.S. 17, 41 (1954)(cited by the ALJ in Hagerty II, 153 NLRB at 1380).

[35] Boilermakers, Local 197 (Northeastern State Boilermaker Employers), 318 NLRB 205, 205 (1995).

> when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to obtaining job referrals.[36]

Thus, the Board found that the union acted arbitrarily in denying a hiring hall user photocopies of hiring hall information where the employee reasonably believed he had been treated unfairly by the union's violation of its hiring hall procedure.[37]

More recently, in San Francisco Electrical Contractors,[38] the Board expressly affirmed the ALJ's determination that a union violated Section 8(b)(1)(A) and (2) by "failing to provide information specifically requested by hiring hall users about relevant rules, practices, standards, and procedures of the hiring hall." In that case, a union local failed to inform travelers from other locals of longstanding local hiring hall rules relating to referral registration, registration appeals, and referral eligibility. In finding that the union violated the Act by not disclosing the requested information, the ALJ wrote that:

> There is no limit on the rules, practices or procedures of any kind which must be disclosed to long as their disclosure is reasonably necessary to the hiring hall users to all allow [sic] intelligent use of the hiring hall system. The test is one of the hiring hall users' need for the information, not the form or type of information involved. Hiring halls dispense or allot employment opportunities, i.e., jobs. The obtaining of employment is serious business and

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[36] Id. (quoting NLRB v. Carpenters Local 608, 811 F.2d 149 (2d Cir. 1987), cert. denied, 484 U.S. 817 (1987)).

[37] Id.; accord IBEW Local 724 (Albany Electrical Contractors Association), 327 NLRB No. 137 (Feb. 25, 1999), slip op. at 8-9 (citations omitted) (a union violates Section 8(b)(1)(A) when it arbitrarily denies a hiring hall user's request for job referral information that is directed toward ascertaining toward whether the user has been treated fairly with respect to obtaining referrals).

[38] IBEW Local 6 (San Francisco Electrical Contractors), 318 NLRB 109, 110 (1995), enf'd, 139 F.3d 906 (9th Cir. 1998).

> information respecting the obtaining of employment through the hiring hall process - from commencement of that process through to the conclusion - is of critical importance to hiring hall users to obtain desired employment.[39]

Here, a casual longshoreman requested information about the expenses comprising the Union's hiring hall fees in order to determine whether he has been treated fairly, i.e., whether the Union has charged him for expenses it may legitimately charge for. This hiring hall fee information is as important to the operation of the hiring hall as any other hiring hall rule or practice. For example, if a union charges a nonmember excessive hiring hall fees, meaning the nonmember is in effect unlawfully subsidizing union activities unrelated to the hiring hall, this is just as unfair as if the nonmember is not properly referred to a job. Since a hiring hall user is always entitled to obtain information relating to referrals if there is reason to believe the union is acting arbitrarily,[40] and under San Francisco Electrical Contractors there is no limit to the hiring hall rules, practices and procedures which are subject to disclosure for the intelligent use of the hiring hall, we conclude that the Union was obligated to provide the casual longshoreman his requested accounting of the Union's hiring hall fees. By refusing to do so, the Union breached its duty of fair representation in violation of Section 8(b)(1)(A) and (2).

C. Mandatory Checkoff and Checkoff without Authorization

It is established law that employees, although subject to the provisions of a lawful union security agreement, have a right under Section 7 of the Act to refuse to sign checkoff authorization cards. Intl. Union of Electrical Workers, Local 601 (Westinghouse Electric Corp.), 180 NLRB

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[39] Id. at 134. See UAW Local 909 (General Motors Corp.-Powertrain), 325 NLRB No. 164 (June 10, 1998), slip op. at 7-8 (union unlawfully refused to provide requested information relating to monetary distributions of arbitral outsourcing award); see generally California Saw, 320 NLRB at 230 n.34 (noting that unions' duty of fair representation obligations may be greater when they operate hiring halls).

[40] See Northeastern State Boilermaker Employers, 318 NLRB at 205.

1062 (1970). This principle has been extended to hiring hall fees.

Although it is not unlawful for a union to require advance payment of hiring hall fees,[41] it is unlawful for a union to obtain hiring hall fees from a nonmember's wage without prior written authorization,[42] and it is unlawful for a union to coerce nonmembers into signing checkoff authorization forms.[43]

> The Board has repeatedly held that dues checkoff authorizations must be made "voluntarily," and that an employee has "a right under Section 7 of the Act to refuse to sign checkoff authorization cards." Any conduct, express or implied, which coerces an employee in his attempt to exercise this right clearly violates Section 8(b)(1)(A).[44]

As a consequence, the Employer violated Section 8(a)(1),(2) and (3) when it deducted hiring hall fees from nonmember casuals' wages without prior written authorization, and the Union violated Section 8(b)(1)(A) and (2) when it accepted these deductions and when it

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[41] See, e.g., Operating Engineers Local 150 (Willbros Energy Serv.), 307 NLRB 272, 273-74 (1992) (traveler required to pay permit fee prior to working); Iron Workers Local 201 (Hyman Construction), 242 NLRB 1177, 1179 (1979) (weekly permit fees); Homan, 137 NLRB at 1052 (weekly hiring hall fees paid quarterly in advance); Robinson Bay, 113 NLRB at 23; Radio Officers, 16 F.3d at 1281 (fees paid quarterly in advance).

[42] Plumbers Local 81 (Morrison Construction), 237 NLRB 207, 210 (1978) ("The law is clear; an employee has a right to select or reject the checkoff system as the method by which to pay his periodic dues to the union.").

[43] Id.

[44] Id. (quoting Electrical Workers, Local 601 (Westinghouse Electric Corp.), 180 NLRB 1062 (1970)); accord ACF Industries, Inc., 245 NLRB 339, 342 (1979) (holding that the employer unlawfully deducted and the union unlawfully accepted union assessments without a valid checkoff, as employees possess a Section 7 right to refuse to sign checkoff authorization cards).

coerced Charging Party Sorenson to sign a hiring hall fee checkoff authorization as a condition of continued employment.

It is unnecessary to determine whether these fees are authorized deductions under Section 302(c)(4) of the Act. "[T]he Act itself and its legislative history compel the conclusion that Congress did not intend the newly created limitations on checkoff in Section 302 to have any impact on the unfair labor practice jurisdiction of th[e] Board under Section 8, so as either to create or not create a per se violation of Section 8 solely on the basis of a violation of those limitations."[45]

D. Discriminatory Operation of the Hiring Hall

Next, we conclude that the allegation that the Union operates the hiring hall in a discriminatory manner should be dismissed, absent withdrawal.

It is not unlawful for a union to maintain a preferential referral system,[46] or a two-tiered wage schedule,[47] or to otherwise negotiate differential contractual provisions, so long as the provisions do not discriminate based on unlawful or invidious factors. For example, in Vanguard Tours, the Board declined to find that the employer and union had discriminated against "part-time" employees on the basis of union membership by paying them less than "regular" or "full-time" employees. Although the union discouraged "part-time" employees from joining the union, and there was a quota on the number of

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[45] Salant & Salant, Inc., 88 NLRB 816, 818 (1950). However, the Board will consider Section 302 in deciding how to construe checkoff authorizations and employee payments to unions "so as to best effectuate Federal labor policies." Electrical Workers IBEW Local 2088 (Lockheed Space Operations), 302 NLRB 322, 325 n.8 (1991).

[46] See, e.g., Pacific Maritime Association, 321 NLRB 82 (1996), enf. denied on other grounds, 124 F.3d 322 (1st Cir. 1997).

[47] See, e.g., Borden, Inc., 308 NLRB 113, 115 (1992) (consolidated unit), enf'd, 19 F.3d 502 (10th Cir. 1994), cert. denied, 115 S. Ct. 316 (1994); Vanguard Tours, 300 NLRB 250, 252 (1990), enf'd in part and enf. denied in part on other grounds, 981 F.2d 62 (2d Cir. 1992).

"regular" employees, the Board found no "linkage" between union membership and "regular" employee status other than the union security clause. "Simply joining the Union without having previously worked the requisite number of hours for the contractually specified period would not qualify an individual as a 'regular' employee."[48] The Board also found that the employer was not obligated to reclassify "part-time" employees as "regular" employees, nor was it obligated to give "part-time" employees more hours, and in fact it had an economic business justification for not doing so.[49]

However, if internal union rules adversely affect nonmembers' employment opportunities, the Board will find a violation of the Act even in the absence of proof that the discrimination actually encouraged union membership.[50] Thus, it is unlawful for unions to provide preferential wages or benefits or referrals solely on the basis of union membership,[51] and it is unlawful for a union to grant union members employment preferences while unilaterally placing a quota on union membership.[52]

Applying Vanguard Tours, we conclude that the Union here did not unlawfully discriminate on the basis of Union membership. As in Vanguard Tours, the Union here does not control access to registered status. Instead, only employees who have worked a specified number of hours may be reclassified from casual to registered status. The change in status is decided jointly by the Union and ALEA through the JPLRC, and Vanguard Tours holds that the employers may lawfully block such promotions out of economic self-interest in keeping wages low. Further, Union membership is not synonymous with registered status. The contractual union security clause is applicable only to

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[48] 300 NLRB at 252-53.

[49] Id. at 253.

[50] Rockaway News Supply Co., 94 NLRB 1056, 1059 (1951).

[51] See, e.g., Prestige Bedding Co., 212 NLRB 690 (1974) (members-only contract where the union accepted welfare contributions only on behalf of union members held to be unlawful); Kaufman Dedell Printing Co., 251 NLRB 78 (1980) (non-union employees not paid the contract wage rate).

[52] Narragansett Restaurant Corp., 243 NLRB 125 (1979).

registered employees. The union constitution permits only employees who have already obtained registered status, not casuals, to obtain membership. As in Vanguard Tours, if casuals were allowed to join the Union, they would not necessarily be entitled to reclassification as registered longshoremen, and thus would not be contractually entitled to higher wages and benefits.[53] Thus, the contractual employment preferences with respect to wages, benefits, and referrals enjoyed by registered longshoremen are not unlawfully linked to Union membership.[54]

CONCLUSION

For the foregoing reasons, we conclude that the Region should issue complaint, absent settlement, alleging that

[53] The contractual benefits include but are not limited to the M and M Fund.

[54] However, the 1996 CBA's two-tiered employment preferences could be found to violate Section 8(b)(1)(A) if there is evidence that Union members negotiated the preferential employment terms intending to benefit only themselves. See, e.g., Teamsters Local 435 (Super Valu), 317 NLRB 617, 617 n.3 (1995) (union unlawfully proposed and agreed to provision awarding greater seniority to an employee group that the union had represented the longest); Lewis v. Tuscan Dairy Farms, 25 F.3d 1138 (2d Cir. 1994) (union president unlawfully agreed to and then concealed an agreement with facility purchaser abrogating need to merge plant's seniority with other facilities); Barton Brands, Ltd., 213 NLRB 640, 641 (1974) (union president unlawfully endtailed seniority of other plant's employees in order to assure his reelection); General Truck Drivers, Local 315 (Rhodes & Jamieson, Ltd.), 217 NLRB 616, 617-19 (1975) (union unlawfully voted on whether particular employee would have bumping rights after being laid off from another division); Red Ball Motor Freight, Inc., 157 NLRB 1237, 1245-26 (1966) (union unlawfully sought preferential seniority for the unit employees it represented in facility merger in order to perpetuate its representation rights). Although a challenge to the negotiation of the contract is time-barred because the instant charges were filed more than 6 months after the execution of the 1996 CBA, see Teamsters Local 896 (Anheuser-Busch), 296 NLRB 1025 (1989), a charge of unlawful enforcement may still be maintained, id.

the Union breached its duty of fair representation in violation of Section 8(b)(1)(A) and (2) of the Act by failing to provide a nonmember casual an accounting of its hiring hall fees in response to a request for such information. We also conclude that Beck has no application to hiring hall fees and that the hiring hall was not operated in a discriminatory manner. [*FOIA Exemption 5*

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Finally, the Region should issue complaint, absent settlement, against North Star and the Union alleging violation of Sections 8(a)(1),(2) and (3) and 8(b)(1)(A) and (2), respectively, for deducting and accepting hiring hall fees without prior written employee authorization.

B.J.K.