interpret and apply the relevant constitutional provision to the Charging Party's situation. Further, even if the employees now filed an appeal, and the Union denied it as untimely, we could not attack the Union's denial of the appeal, even if we thought that this was a misapplication of the Union's constitution. The fact that a union misinterprets its own rules does not, standing alone, constitute a violation of the Act. Since it is not shown that an appeal would be timely, and since an appeal is not pending, it follows that the fine levied outside the 10(b) period was a final act. Accordingly, the fine is immune from attack.

U.S. POSTAL SERVICE, Case No. 19-CA-16909(P), January 22, 1985

From Harold J. Datz, Associate General Counsel, Division of Advice, to John D. Nelson, Director Region 19

— Discrimination ▸52.74 ▸52.01

Employer did not violate Section 8(a)(3) of LMRA when it became party to joint employer-union "employee involvement program," which provided in part for workteams that were to identify workplace problems and suggest solutions, and in which only union members could participate. (1) Workteams may supplement union's collective bargaining activities, and therefore union is privileged to designate employee members of teams and also to demand that only union members be allowed to serve as employee representatives of teams; (2) training and pay provided for participation are not benefits impermissibly tied to union membership but are merely incidental to performance of collective bargaining functions by employee members of workteams.

(Text) This case was presented for advice as to whether the U.S. Postal Service (the Employer) violated Section 8(a)(3) of the Act when it became a party to a joint Employer-Union "Employee Involvement Program" which limited unit employee participation in the program to National Association of Letter Carriers (the Union) members.[1]

FACTS: In September 1982, the Employer and the Union established an Employee Involvement Program which provided in part for the formation of employee and management "workteams" whose proposed function was to identify and suggest solutions to workplace problems, with the overall goal of improving the quality of worklife.

A brochure which was issued jointly by the Employer and the Union to all employees explained that the workteams would be composed of managers, employees and at least one Union steward. Employees who serve as members of a workteam receive 16 hours of training prior to their service. Each workteam meets for one hour per week; each employee is paid at his or her regular rate of pay for that hour.

During the developmental stages of the program, the Union insisted that only Union members be allowed to apply for and serve on a workteam. This demand became part of the final program agreed upon by the Employer and the Union.

Brochures explaining the program have stated that only non-contractual issues may be addressed by the workteams and that none of the recommendations made by the workteams may interfere with or negate the National or Local collective-bargaining agreements between the Union and the Employer. The recommendations of the workteam were to be presented to and accepted or rejected by the Employer's managers who were not obligated to bargain with the workteam. Additionally, the Union and the Employer have explicitly stated that the Employee Involvement Program is entirely separate from collective bargaining, is not a replacement for collective bargaining and is not a substitute for the contractual grievance procedure. Notwithstanding this, contrary to the prior statement, there is evidence that the Union and the Employer expect mandatory topics of bargaining to be discussed by the workteam. For example, the Employee Involvement Program guideline booklet contains a statement that one of the goals of the program is, "*creation of working conditions* and a work atmosphere that is self-satisfying for the letter carriers by giving them the opportunities to influence their work environment" (emphasis added). The example that the program brochure gives of a possible workteam topic is a discussion of changes in and recommendation about the starting times of bargaining unit letter carriers.

The incident which forms the basis for the instant Section 8(a)(3) charge occurred on July 10, 1984. On that date, the Employer held a meeting of all of its employees at its Anchorage, Alaska facility. The purpose of the meeting was to introduce the Employee Involvement Program to Anchorage employees and to select participants for a workteam at that facility. During the meeting, an Employer representative told the employees that only Union members could become workteam participants. At the close of the meeting employees who were interested in serving on a workteam were instructed to place a piece of paper with their name on it into a hat which was being circulated. The Charging Party in the instant case is not a Union member and therefore was not permitted to place his name in the hat. After drawing the names for the hat, only four of six available positions were filled by interested employees. However, the Charging Party was not permitted to fill either of the two remaining workteam vacancies. As a result, on July 14, 1984, the Charging Party filed the instant Section 8(a)(3) charge.

ACTION: We have concluded that the Section 8(a)(3) charge should be dismissed, absent withdrawal. The Union was privileged to demand that only Union members

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[1] Footnote omitted in original.

be chosen to serve on Employee Involvement Program workteams because these teams will potentially be engaging in collective bargaining. Therefore, the Employer did not violate Section 8(a)(3) of the Act by agreeing to and enforcing such a limitation on employee participation in the Employee Involvement Program.

It is well settled that a union has the sole authority to choose its agents for collective bargaining and that the choice of union agents is an internal union matter.[1] Therefore, if the Employee Involvement Program workteam has collective bargaining responsibilities, the Union could lawfully choose its employee representatives on the workteam.

We have concluded that the workteams will in fact be discussing topics of collective bargaining. One of the goals of the Employee Involvement Program is the involvement of letter carriers in the "creation of working conditions. . ." Moreover, one of the examples given as a possible topic for the workteams concerns changing work starting times for bargaining unit employees. This topic is clearly one for collective bargaining. Thus, even though the Union and the Employer have stated that the Employee Involvement Program is to be separate and distinct from the collective-bargaining process, that separation will apparently not be maintained, in fact, since the Union and the Employer appear to expect the workteams to discuss collective-bargaining topics and to make recommendations which will affect terms and conditions of employment. The fact that the Union has agreed that the Employer can accept or reject workteam proposals without engaging in further negotiations with the workteam does not warrant a contrary conclusion, since it is possible that the recommendation of the workteam may prompt the Employer to change its position on the disputed subject. Therefore, since the workteams may supplement the Union's collective bargaining activities, the Union is privileged to designate the employee members of the workteams and also to demand that only Union members be allowed to serve as employee representatives on the workteam. Consequently, the Employer did not violate Section 8(a)(3) of the Act by acquiescing in the Union's demand that only Union members be allowed to participate in the workteam as employee representatives.[2]

Finally, we note that it could be argued that the training and pay provided for participation on a workteam are employee benefits which the Employer denied to the Charging Party merely because he is not a Union member and therefore, the Employer has discriminated against the Charging Party in violation of Section 8(a)(3). However, since we have concluded that the training and the pay will be provided for the purpose of aiding the Union to engage in collective bargaining, the training and pay should not be viewed as a grant of employee benefits impermissibly tied to Union membership. It is more appropriate to view the training and pay as lawful because they are merely incidental to the performance of collective-bargaining functions by employee members of the workteam.[3]

For all of the above reasons, the Section 8(a)(3) charge should be dismissed, absent withdrawal.

OHIO CRANKSHAFT AND CAMSHAFT DIVISIONS OF PARK-OHIO INDUSTRIES, INC., Case No. 8-CA-17795, February 14, 1985

From Harold J. Datz, Associate General Counsel, Division of Advice, to Frederick J. Calatrello, Director Region 8

— Refusal to bargain ▸54.7512

Employer did not violate Section 8(a)(5) of LMRA by its post-strike withdrawal of contract offer and substitution of offer less favorable to union, even though strike was unfair labor practice strike. Employer had valid business justification; employer's unfair labor practices, though serious, were not as egregious as those involved in Harowe Servo Controls (105 LRRM 1147), and employer did not make statements indicating that offer was withdrawn in order to undermine union.

[*Text*] This case was submitted for advice as to whether the Employer violated Section 8(a)(5) of the Act by withdrawing an outstanding contract offer and substituting a more regressive proposal after weathering an unfair labor practice strike.

FACTS: The Employer and the Union were parties to a collective bargaining agreement covering a single unit of OCCO Division and Tocco Division employees at two of the Employer's plants in Ohio. The Union struck the Employer on July 11, 1983, after the parties' collective bargaining agreement expired and the Union rejected the Employer's final offer for a new contract. The Region has determined that the strike is an unfair labor practice strike based, inter alia, on the Employer's unlawful closure of its Tocco Cleveland Division and relocation of bargaining unit work to the Employer's Boaz, Alabama facility.[4] In

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[1] Oates Brothers, Inc., 135 NLRB 1295, 49 LRRM 1676 (1962); Sears, Roebuck & Co., Inc., 139 NLRB 471, 51 LRRM 1327 (1962); Procter and Gamble Manufacturing, 237 NLRB 747, 99 LRRM 1245 (1978); Howland Hook Marine Terminal Corp., 263 NLRB 453, 111 LRRM 1001 (1982); St. Joseph's Hospital, 269 NLRB No. 147, 116 LRRM 1461 (1984).

[2] Although the Employer asserts that the Employee Involvement Program is not a *substitute* for the collective-bargaining process, it seems clear from the evidence to date that the Program is designed to *supplement* that process.

[3] Since this is not a case involving a grant of superseniority, it is unnecessary to decide whether Dairylea Cooperative, Inc., 219 NLRB 656, 89 LRRM 1737 (1975), enf. 531 F.2d 1162, 91 LRRM 2929 (2d Cir. 1976), privileges this grant to collective-bargaining negotiators as well as to those who help administer collective-bargaining agreements.

[4] The Tocco Division has been the subject of extensive litigation before the Board, which continues to date. See Tocco Division of Park-Ohio Industries, Inc., 257 NLRB 413, 107 LRRM 1498 (1981), enfd. 702 F.2d 624, 112 LRRM 3089 (6th Cir. 1983).