JEL CLERKS GUILD OF MASSACHUSETTS, INC. AND LOUIS LANFRANCHI AND ROBERT STEIN, UPL-78 (3/28/77).

(70 Union Administration and Prohibited Practices)
75.3 Internal affairs - expulsion and suspension from membership

iissioners Participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner.

arances:

Mark Kaplan, Esq. - Counsel for Louis Lanfranchi and Robert Stein

George B. Washington, Esq. - Counsel for the Mutuel Clerks Guild of Massachusetts, Inc.

DECISION AND ORDER

Statement of the Case

On November 15, 1975, a Complaint of Unfair Labor Practice was filed with State Labor Relations Commission (the Commission) by Louis Lanfranchi and rt Stein (the Charging Parties) alleging that a practice prohibited by General Laws, Chapter 150A, Section 6A had been committed by the Mutuel Clerks d of Massachusetts, Inc. (the Guild). After investigation, the Commission, arch 24, 1976, issued its Complaint of Unfair Labor Practice, alleging that Guild had violated General Laws, Chapter 150A, Section 6A by unfairly suspending or expelling the Charging Parties from membership in good standing in Guild and by requesting their discharge from employment by Ogden Suffolk s, Inc. (the Employer or the Track). On March 31, 1976, the Guild filed nely answer, denying the commission of the alleged unfair labor practices Further denying that the Guild had requested the Charging Parties' discharge ie Track. On the same day, the Guild filed a Motion for Specifications to i the Charging Parties voluntarily submitted a response. Thereafter, pur- to General Laws, Chapter 150A, Section 6, a Formal Hearing was conducted e the Commission on May 3 and 18, 1976, at which the parties were afforded opportunity to be heard, to examine and cross-examine witnesses, and to oduce evidence. At the hearing the Guild modified its answer and admitted it had sought discharge of the Charging Parties from employment at the . Briefs were timely filed and have been carefully considered. Upon the d herein, we make the following findings of facts.

Findings of Facts

1. The Mutuel Clerks Guild of Massachusetts Inc., is a "labor organization " within the meaning of General Laws, Chapter 150A, Section 2(5).

2. Ogden Suffolk Downs, Inc., a Massachusetts Corporation doing business in Boston, Massachusetts, is an "employer" within the meaning of General Laws, Chapter 150A, Section 2(2).

3. Louis Lanfranchi and Robert Stein were at all times relevant to this Decision employees of Odgen Suffolk Downs, Inc.

lerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

The Guild is the exclusive representative of a unit of employees employed by Ogden Suffolk Downs, Inc., which unit includes the Charging Parties.

The Guild and the Employer are parties to a collective bargaining agreement effective April 24, 1974 to April 23, 1977 which requires, as a condition of employment, that all employees covered by the agreement be members in good standing of the Guild.

Charging Parties and the Guild have been in conflict for a number of Following a strike called by the Guild against the Employer in 1968, d took disciplinary actions against the Charging Parties and others for reaking, dual unionism and other offenses. When the Charging Parties o pay the fines resulting from the disciplinary action, the Employer ed them. After extensive litigation before this Commission and the tates District Court, the Charging Parties were reinstated in November, l awarded back pay in June, 1975.

June 1, 1975, the Guild held a two-hour general membership meeting to inter alia, pension benefits contained in the collective bargaining t and to nominate new officers for the coming year. The meeting was ted when a group of members, allegedly including the Charging Parties, ckling the speakers and shouting ethnic slurs. During the twenty-min- rruption, a fight broke out between the hecklers and other members of d. On June 10, 1975, four members of the Guild, in identically worded notified the Guild's Secretary-Treasurer, Frank Richards, that they o bring intra-union charges against Stein for his conduct at the June g. Two of these members filed identically worded charges against Lan- Richards assisted these members in developing and filing these charges.

separate letters, dated June 25, 1975, the Charging Parties were noti- Richards that the Guild's Executive Committee would hold a hearing on ges on July 15, 1975. Each party was given a specific list of the which alleged that they had:

Disrupted the meeting "by shouting down speakers, refusing to obey the rulings of the chair, provoking confrontation with the members of the Guild, and otherwise obstructing the continuation of the meeting";

Engaged in "provocative and insulting language and ethnic slurs of Guild officers and members including calling persons 'guinea bastard' and other similar insults to Italian Americans"; and

Struck, without provocation, Guild members "resulting in complete disruption of the membership and causing certain members to leave the meeting for fear of their safety".

er also alleged that these charges constituted acts and conduct war- suspension or expulsion under Article IV, Section D(7) of the Guild's

ituel Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

nstitution and By-Laws.[1] The Charging Parties were further advised that they d a right to be represented at the hearing.[2]

The Charging Parties retained Attorney Mark Kaplan, who had represented em in previous litigation with the Guild, to represent them at the disciplin- y hearing. Because of a pervious commitment on July 15, 1975, Kaplan was un- le to attend the hearing. By telephone, Kaplan requested the Guild, through s counsel, to change the date of the hearing. The Guild refused this request, ating that arrangements had already been made for the rental of a hearing room. plan made arrangements with his partner, attorney James Grady, to represent e Charging Parties at the proceeding.

The Guild's Executive Committee convened the hearing on July 15, 1975 at e Knights of Columbus Building. Grady made motions seeking postponement the hearing and the disqualification of any member of the Executive Committee o had been present at the June 1 Guild meeting. Both motions were denied. e Guild's Business Agent, Joseph Arena, however, disqualified himself from tting on the Executive Committee in this matter. At Grady's request, a joint ial of Lanfranchi and Stein was conducted. No transcript of recording of the aring was made. Richards, who sat on the Executive Committee during the pro- eding, wrote up the minutes of the hearing from his notes after the hearing s completed. Eight witnesses, including Business Agent Arena, testified ainst the Charging Parties and were cross-examined by Grady. Neither Lanfran- i nor Stein testified. The Executive Committee then deliberated and found

[1] Article IV, Section D(7) reads in part:

> "The Executive Committee may, in lieu of taking action to expel or suspend a member, fine a member a sum not less than twenty-five ($25.00) dollars nor more than one thousand ($1,000.00) dollars if found guilty of any of the charges preferred against him...."

Article III, Section B of the Guild's Constitution and By-Laws provides that a member or officer may be expelled or suspended for conduct that constitues, inter alia, 1) endeavoring to create dissension or working against the interests and harmony of the Guild; 2) slandering or defaming of the character of an officer or member of the Guild; 3) insubordination against the authority of the Guild; and 4) any other violation of the provisions of the Constitution and Laws of the Guild.

[2] A third member of the Guild, Samuel Perni, was also charged, in an iden- ally worded letter, with the same offenses. Perni received the same notice the Executive Committee hearing. He elected to represent himself at the ring, pleaded guilty to the first charges, and denied any involvement in alleged assault of Guild members. The Executive Committee fined him $300.00 the first charge, $100.00 for the second charge, and found him not guilty the third charge. Perni represented himself on appeal to the full member- p and, after his fines were upheld, he made timely payment to the Guild. ni is not a party to this action.

ıchi and Stein guilty of all three charges. Each was fined $300.00 on rst charge, $100.00 on the second charge, and $600.00 on the third charge.

ı July 17, 1975, the Charging Parties were notified of these findings and ed of their right to appeal the Decision to the full Guild membership at kt Guild meeting. The Charging Parties filed an appeal and, on September 75, were notified that a meeting of the Guild had been scheduled for Octo- 1975. They were further notified that they could be represented by coun- ıo would be given five minutes to plead each case to the membership.[3] At nbership meeting, Kaplan protested the time limitation but was overruled. then presented his clients' case, in rapid fashion, for approximately ıutes. When he had finished, he was ordered to leave the meeting room. ınsuccessfully protesting this ruling, he left. Perni was also allowed inutes to present his appeal. The Guild's attorney then spoke to the ship for approximately twenty minutes, outlining the Executive Committee's on. Thereafter, the membership ratified the fines imposed by the Execu- ommittee[4] and passed a Motion giving the Charging Parties until November) to pay the fines.

)th Lanfranchi and Stein refused to pay their fines. On November 10, Richards informed the Employer by letter that the Charging Parties were ıer members in good standing of the Guild and advising the Employer of :y under the union security clause of the collective bargaining agree- Upon the receipt of a copy of this letter, the Charging Parties filed ıtant Complaint of Unfair Labor Practice with the Commission and informed)loyer of their action. On the basis of the pending charge, the Employer ve Vice-president, Richard T. Donovan, sent a letter to the Guild, dated

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The September 12, 1975 letter stated that this time limitation was in ınce with the Guild's Constitution and By-Laws. We are unable to find provision in this document. We note, however, that the Guild departed ·ior practice by allowing, for the first time, a disciplined member to be ented on appeal by counsel.

ly a standing vote, the membership voted 137 to 6 against Lanfranchi, 135 ıainst Stein and 139 to 1 against Perni.

Article II, paragraph 1 of the Agreement between the Guild and the Track is as follows:

> It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Guild in good standing on the effective date of this Agreement shall remain members in good standing in the Guild. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date shall, on or after the thirtieth day following the beginning of such employment become and remain members in good standing in the Guild.

utuel Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

ovember 20, 1975, informing the Guild that no action would be taken against ne Charging Parties until the charge was resolved.[6] Lanfranchi and Stein continued to work for the Employer.

Opinion and Conclusion of Law

General Laws, Chapter 150A, Section 6A (the Law) requires that the Commission examine the actions of a labor organization if it suspends or expels an individual from union membership (for reasons other than non-payment of regular initiation fees, dues or assessments), where such individual is required as a condition of employment to be a member in good standing of the labor organization. If a labor organization requests or is about to request the employer to discharge an employee because the employee has lost good standing in the labor organization as a result of disciplinary action, the Commission, upon request of the affected employee, must determine the fairness of the discipline. The law requires that the Commission make four inquiries in order to determine if the discipline was proper.

1. Was the discipline imposed by the labor organization in violation of its constitution and by-laws?

2. Was the discipline imposed by the labor organization without a fair trial, including an adequate hearing and opportunity to defend?

3. Was the discipline warranted by the offense, if any, committed by the employee against the labor organization?

4. Was the discipline consistent with established public policy of the Commonwealth?

If the Commission finds that any one of these four requirements has not been satisfied, it may order the labor organization to restore the employee to membership in good standing or refrain from seeking to bring about any discrimination against the employee because he is not a member in good standing.

General Laws, Chapter 150A, Section 6A which was enacted in 1937 attempts to balance two well established policies of the Commonwealth: the first allows the parties to a collective bargaining agreement to include in the agreement a union shop provision, Hamer v. Nashawena Mills, Inc., 315 Mass. 160, 52 N.E.

[6] General Laws, Chapter 150A, Section 4 makes it an unfair labor practice for an employer to discharge an employee because the employee is not a member in good standing of a labor oragnization unless the labor organization has certified that the employee has lost membership in good standing as a result of the administration of discipline and that the employee has exhausted all remedies available to him within the labor organization. The letter from the Guild to the Employer on November 10, 1975 does not certify the Charging Parties had exhausted their internal remedies. On May 6, 1976, the Guild sent a second letter to the Employer certifying that internal remedies had been exhausted in this case. The Charging Parties have filed a Complaint of Unfair Labor Practice (Case No. UPL-83) against the Guild, challenging the validity of these letters. The parties agreed that the Commission should not process the second complaint until the resolution of the instant case.

(1944), and the second restricts the interference by a labor organization person's right to gainful employment in a chosen occupation, Sweetman v. , 263 Mass. 349, 161 N.E. 272 (1928). Since the enactment of General hapter 150A a growing body of statutory and case law has arisen defining process safeguards that should be afforded individuals in proceedings lay tribunals which affect the individuals' personal or property inter- E.g. Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. LMRDA): Board of Regents v. Roth, 408 U.S. 564 (1972); Hortonville Joint District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976). visions of the LMRDA guarantee rights similar to those provided under 6A. We will consider the procedural safeguards of the LMRDA as guiding re appropriate, to effectuate the Commonwealth's policy concerning labor ns.[7]

e Charging Parties argued at the formal hearing and in their brief that ld, by seeking the discharge of the Charging Parties, is in effect the party and should have the burden of proving that its actions complied e statutory requirements of the Law.[8] The courts of the Commonwealth ng recognized that, in cases involving expulsion or suspension of union from membership in their labor organizations, the affected employee has den of showing that his suspension or expulsion was unfairly administered. n v. Barrows, supra.; Becker v. Calnan, 313 Mass. 625 48, N.E. at 668 We see no reason why the disciplined employees should not have the same in a proceeding under Section 6A before thie Commission.[9] If a labor ation acts fairly and equitably, it has the right to expel or suspend a for violations of its governing rules, Becker v. Calnan, supra. The ds of fair and equitable treatment are clearly established in the Law. the Commission's subpoena power a charging party may obtain the evi- o show that the disciplinary action was not in compliance with the Law. lude that the party filing the complaint has the burden of proving the ions of the formal complaint by the preponderance of the evidence. We w to the statutory standards set forth in Section 6A of the Law.

e first precondition for a valid disciplinary action is that the Union's ine must comply with the provisions of the organization's constitution laws. The Charging Parties argue that the Guild's action does not meet andard because:

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lthough the National Labor Relations Board declines jurisdiction over tuel tracks, we note that the Guild is a labor organization within the of 29 U.S.C. 402 (i) and subject to the provisions of the LMRDA. Stein el Clerks Guild of Massachusetts, Inc. 304 F. Supp. 444, 87 LRRM 2827 ass. 1974).

ne Charging Parties' motion to this effect was denied by the Chairman at set of the formal hearing and the Charging Party took exception to the

ne Commission has consistently held that in prohibited practice proceed- the public sector, arising under General Laws, Chapter 150E, the charg- ty has the burden of proof. See, Town of Sharon, MUP-2258, 2 MLC 1205, 975) and MLRC Rules, Art. III, §4.

Mutuel Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

1. The notice of the charges given to the Charging Parties by the Guild does not specify the applicable constitutional provisions alleged to have been violated, and

2. The fines assessed by the Guild are in excess of the amount allowed by the Guild's Constitution and By-Laws.

We find no provision in the Guild's Constitution or By-Laws that specifies the type of notice the Guild must give to its members prior to taking disciplinary action. The Law does not specifically require that the employee receive notice of the charges prior to the disciplinary hearing. The Law requires, however, that the employee have an adequate hearing and an adequate opportunity to defend. To ensure a union member an opportunity to prepare an adequate defense, courts have held that a labor organization must provide its member notice of the hearing and the charges. Polin v. Kaplan, 257 N.Y. 277, NE 833 (CA. N.Y. 1931) reh. den., 257 N.Y. 579, 178 NE 803 (CA. N.Y. 1931); Cason v. Glass Bottle Blowers Association, 37 Cal 2d. 134, 231 P. 2d 6, 21 ALR 1397 (1957). 29 U.S.C. 411(a)(5)(A). The notice of the charges should include a detailed and specific statement of the relevant facts involved in the charge that is sufficient to enable the employee to understand the allegations and prepare his or her defense, Boilermakers v. Hardeman, 401 U.S. 233 (1971). A mere statement or citation to the constitutional provisions alleged to have been violated is not enough. Magleson v. Local 417, Plasterers, 233 F. Supp. 459 (W.D. Mo. 1964).

The Guild's written notice of the charges meets this standard. Instead of merely summarizing the charges against Lanfranchi and Stein, the notice contained copies of the written charges filed by the Guild members. These charges outline with considerable specificity the nature of the violations and state the date and place of the alleged events. They name the persons who made the allegations and the members of the Guild who were allegedly assaulted.

The charges state that Lanfranchi and Stein "engaged in acts and conduct warranting a suspension or expulsion from the Guild under Article IV, Section (7) of the Guild's Constitution and By-Laws". The cited provision allows for fines up to $1,000.00 "in lieu of taking action to expel or suspend a member". We interpret this provision to mean that the Guild can only fine a member up to $1,000.00 if they are found guilty of conduct that would warrant suspension under the provisions of the Guild's Constitution. The citation to the provision, therefore, put the Charging Parties on notice that the acts and conduct specified in the complaint were within the meaning of conduct warranting suspension as defined in Article III, Section B of the Guild's Constitution and By-Laws. In view of the specification of facts in the charge, we cannot conclude that the notice was insufficient or that the citation to the constitutional provision prejudiced or misled the Charging Parties in preparing a defense.

Article III, Section B of the Guild's Constitution and By-Laws provides inter alia, that the Guild may suspend or expel any member who endeavors to create dissension within the Guild or who works against the interest and harmony of the Guild or who performs any act of insubordination against the authority of the Guild. Using ethnic slurs to shout down speakers, refusing to

Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

e ruling of the chair at a Guild meeting and assaulting Guild members to be the type of conduct that would be included under the provisions cle III, Sec. B.[10]

the basis of the foregoing, we conclude that the notice sent to the g Parties by the Guild was sufficient and that the fines assessed by ld's Executive Committee and ratified by the Guild membership were not ss of the amount allowed for the alleged offenses by the Guild's Consti- and By-Laws. There being no other constitutional violations alleged or we further conclude that the discipline imposed by the Guild was not in on of its Constitution and By-Laws.[11]

e second precondition for a valid disciplinary action under the Law is e discipline may be imposed only after a fair trial, including an ade- earing and opportunity to defend. This provision is similar to provi- f the LMRDA, 29 U.S. C 411(a)(5)(B) and (C) which require that a labor ation afford a member "reasonable time to prepare his case" and "a full r hearing" before imposing disciplinary sanctions.

e fair trial requirement does not mean that the labor organization must with the constitutionally required procedural safeguards of a criminal ing, Gleason v. Chain Service Restaurant Employees' Union, 300 F. Supp. 251 (S.D.N.Y. 1969), aff'd, 422 F. 2d. 342 (2d. Cir. 1970); Stein, supra. require, however, that the hearing be conducted by an impartial tri- Falcone v. Dantinne, 420 F.2d. 1157, 1166 (3d. Cir. 1969). It is not ry to decide here if an adequate opportunity to defend requires afford- member the right to be represented by legal counsel.[12] The parties in

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We note that labor organizations frequently use similar provisions to ine members for the type of conduct alleged to have been committed by rging Parties here. See, for example, Boilermakers v. Hardeman, supra ault of a union officer resulted in disciplinary action for creating ion and working against the interests of the union.) The Charging Par- gue that the alleged heckling and disruption of the meeting is protected "Freedom of Expression" provisions of Section 101(a)(2) of the Landrum- Act, 29 U.S.C. 411 (a)(2). Without deciding this question here, we note e cited statute provided union members the freedom to express their dis- union business and to present opposing views at union meetings, "subject organization's established and reasonable rules pertaining to the conduct ings". See, Salzhauldler v. Caputo, 316 F.2d. 445 (2nd. Cir. 1963). ible rules of order would include the right to exclude individuals who a union's business meeting.

That the fines are permitted by Guild's Constitution does not answer the n whether the fines are "warranted" under clause 3 of Section 6A of the Laws.

Absent a union rule allowing counsel, most jurisdictions do not recognize member's right to be represented by legal counsel at an internal union inary proceeding. Buresch v. International Brotherhood of Electrical , Local 24, 343 F. Supp. 183, 77 LRRM 2932, 2938 (D.C. Md. 1971); Cor- . Metropolitan District Council of Philadelphia, 243 F. Supp. 126, 129, (cont'd.)

uel Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

isciplinary proceeding, however, sould be placed on a "roughly equal foot-". Cornelia v. Metropolitan Discrict Council of Philadelphia, supra N. 12; esch v. International Brotherhood of Electrical Workers, supra N. 12. There-e, once the labor organization allows the accused members to be represented counsel, counsel should have the same opportunity to present his case that accusers are given.

A careful examination of the circumstances surrounding the disciplinary ring in this case leads us to find that the Charging Parties were denied a r hearing and an adequate opportunity to defend. The record reveals that ıards, the Guild's Secretary-Treasurer, participated on the Executive Com-tee during the hearing and the Committee's deliberations. Richards also isted the Guild members in filing the charges against Lanfranchi and Stein. ıards' involvement in this matter was more than merely relaying the charges the Executive Committee. Richards typed the charges which had been prepared the Guild's legal counsel. Richards presented his typed preparation of the rges against Lanfranchi and Stein. This involvement raises a serious possi-ity that Richards could have prejudged the case before any evidence was pre-ted. Despite this possibility, Richards declined to disqualify himself and, Fact, took an active role in the deliberations of the Executive Committee. s alone would not warrant a finding that the Charging Parties were denied a r trial.

The notice of findings sent to Lanfranchi and Stein by the Guild after the al proceeding contain identically worded findings. The testimony at the dis-linary hearing seems to indicate, however, varying degrees of involvement in alleged offenses by the disciplined members. For example, it appears that evidence was presented at the hearing concerning Stein's use of ethnic slurs ing the meeting, although a number of witnesses indicated that Lanfranchi en-ed in such conduct. The findings, however, show that the Executive Committee ıd both Stein and Lanfranchi equally guilty of shouting "guinea bastard" and er slurs against Italian-Americans. The minutes of the hearing, prepared by ıards after the close of the proceeding, refer to the Executive Committee's ficulty in viewing the charges against Stein and Lanfranchi separately. The rging Parties have a right to be treated individually in the Executive Com-tee deliberations concerning the evidence against them. Although it appears the procedure during the deliberations was to separately consider the evi-e against the three members, these circumstances indicate that the Executive ıittee made, at most, a minimal effort to differentiate the individual con-of the Charging Parties.

The Guild's conduct in this case also indicates that the Charging Parties denied an adequate opportunity to defend. By refusing to change the hear-date, the Guild denied the Charging Parties' counsel who had the necessary

12 (cont'd.)
d, 358 F.2d. 728, 61 LRRM 2688 (3d. Cir. 1966), cert. den., 368 U.S. 975, . Ct. 1167, 18 LEd. 134 (1967); Berryman v. International Brotherhood of trical Workers, 449 P2d. 250, 72 LRRM 2749 (Nev. Sup. 1969); Local No. 2 v. lib, 133 N.J. Eq. 572, 33 A. 2d. 710 (1943).

Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

lge of the background of this case to effectively argue this issue. irging Parties' counsel made a timely and reasonable request for a change e. The expense and inconvenience to the Guild in changing the date does :weigh the prejudice caused to the Charging Parties by having new counsel, ; unfamiliar with the conflict in this matter.

ıe prejudice resulting from the refusal to change the date might have been :d by an effective appeal process, Becker v. Calnan, supra. Instead, the ı was compounded by the Guild's actions during the appeal proceedings be- ıe full membership. Without any constitutional justification, the Guild ive-minute time limit on the presentation of each case on appeal. No imitation was imposed on the Executive Committee's presentation to the ship and, in fact, its counsel took almost twice the total time allowed to irging Parties. In addition, while the Executive Committee's counsel :he Guild's counsel) was allowed to hear the Charging Parties' arguments eal, Stein's and Lanfranchi's attorney was excluded from the meeting during ecutive Committee's presentation, thus, denying him an opportunity to rebut juments of the Committee's counsel. Thus the parties were not placed on oughly equal footing" contemplated by the cases discussed above.

ot all of the foregoing Guild actions, if examined separately, would neces- be sufficient to find that the Guild denied the Charging Parties a fair But, when examined as a whole, the serious possibility of prejudgment case by some of the Executive Committee members, the minimal effort to entiate between the actions of Lanfranchi and Stein, and the rulings by t affecting the Charging Parties' ability to effectively present their cases cute serious deficiencies in the proceedings which affected the adequacy hearing and of the Charging Parties' opportunity to defend themselves.

ıen examined in light of the long history of conflict between the parties, leficiencies become even more serious. Although we decline to find that sciplinary action was motivated by a desire to punish Lanfranchi and Stein eir prior legal actions against the Guild, we cannot ignore the animosity ıderlies the relationship between the Charging Parties and the officers mbership of the Guild. The similarity in the language of the charges and rebutted testimony of the Charging Parties that there were other Guild mem- ıo engaged in the heckling at the meeting but were not disciplined create spicion that the disciplinary action was a result of collusion among the s officers to punish the Charging Parties for being dissidents. At the east, the Guild should have recognized the possibility of this animosity ing the disciplinary proceedings and taken every precaution to insure that arging Parties were disciplined solely upon the basis of the evidence pre- against them at the hearing. The deficiencies in the Guild's disciplin- ocess left open the possibility that the prejudice would be a factor in liberations of the Executive Committee and the membership.

ı the basis of the foregoing, we conclude that the discipline of Lanfran- d Stein was imposed by the Guild without a fair trial, including an ade- hearing and opportunity to defend and, therefore, the Guild's action was lation of General Laws, Chapter 150A, Section 6A.

utuel Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

The third precondition to a valid disciplinary action under the law is hat the discipline must be warranted by the offense, if any, committed by the mployee against the labor organization. Since we have concluded that the disiplinary action was imposed without a fair trail, we need not decide whether ie disciplinary fines in this case meet this standard. In view of the serious uestions presented by these fines, however, we feel that this aspect of the isciplinary action warrants comment.

We have already decided that the amount of the fines were permitted by the uild's Constitution and By-Laws. The Constitution and By-Laws sets only the inimum and maximum fines and leaves the determination of the amount of the fine i each case to the discretion of the Executive Committee and, ultimately, the embership. The law places the responsibility of determining the reasonableness that discretion, in view of the offenses, with the Commission. It appears iat the Commission is authorized to balance the probative weight of the evi:nce against the penalty imposed. In this respect the Law differs from the IRDA whidh has been interpreted to limit judicial review to a determination of ether the charges are supported by any evidence, Lewis v. American Federation State, County, and Municipal Employees, 407 F.2d. 1185 (3d. Cir. 1969).

We feel that there are certain mitigating factors presented in this case at should have been considered by the Guild before it set the fines. The cord reveals that the June 1 Guild meeting was held in a location where liquor uld be purchased. There appears to have been a considerable amount of drinkg at the meeting. The Guild was aware that liquor would be available and ould have realized that the consumption of alcohol could affect the conduct the membership at the meeting. In spite of this, the Guild took no precauonary measures that could have been used to enforce the rulings of the Chair d other Guild rules pertaining to the conduct of meetings. Had the Guild ken such precautions, the confrontation might have been avoided or, at least, ve been more effectively controlled.

The Charging Parties argue that their actions were protected by the "Freen of Expression" provisions of the LMRDA, 29 U.S. C. 411 (a)(2). These provions give a union member the right to dissent at union meeting, "subject to the ganization's established and reasonable rules pertaining to the conduct of etings". We decline to decide if the Charging Parties' conduct was protected these provisions. However, we feel the Guild should have considered this estion.

We have already noted that no evidence was presented at the disciplinary oceeding indicating that Stein used ethnic slurs during the meeting. Most of witnesses testified that Perni was the person who engaged in such activity. ir testimony was supported by Perni's guilty plea to that charge. Only siness Agent Arena named Lanfranchi as the person shouting ethnic slurs. Guild, however, found all three members equally guilty of the charge. The ld should have considered the effect of Perni's admission of guild and the ght of the evidence against Lanfranchi and Stein in determining the amount the fines assessed for this charge.

If, instead of pressing internal disciplinary charges against Lanfranchi Stein, the allegedly assaulted members had filed criminal charges for

and battery, the maximum fine that could have been imposed, pursuant ral Laws, Chapter 265, Section 13A, is $500.00. The Guild imposed a $600.00. Without being afforded the due process rights required by stitution in criminal cases, the Charging Parties were punished more y than they would have been had they been found guilty under the cri- tatute. In addition, the fines imposed in this case are substantially than the fines imposed by the Guild in other disciplinary actions.[13] h the Guild is not bound by criminal statutes or its past practices, that these factors must be considered by the Commission in determining a fine is warranted.

e fourth precondition to a valid disciplinary action under the Law is e discipline must be consistent with the established public policy of monwealth. Since the Guild's disciplinary action was imposed without a ail, we conclude that the discipline was inconsistent with the public of this Commonwealth and, therefore, was in violation of the Law.

finding that the discipline imposed by the Guild on the Charging Par- s in violation of the Law, we do not intend to reach any conclusion as guilt or innocence of the Charging Parties concerning alleged offenses. in this Decision or our Order should be construed as preventing the rom conducting a rehearing of these charges, if it concludes that it can n accordance with the terms of this Decision.

Order

the basis of the foregoing findings of fact and conclusions of law, EREBY ORDERED, pursuant to General Laws, Chapter 150A, Section 6A, that uel Clerks Guild of Massachusetts, Inc. shall:

Restore Louis Lanfranchi and Robert Stein to membership in good standing together with full voting rights;

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[13] The fines assessed Lanfranchi and Stein totalled $1,000.00 each, which irging Parties assert is more than their gross earnings for one month. lent's Exhibit #10 indicates that there have been only two instances in he Guild disciplined a member by the imposition of a fine greater than). The first instance appears to have involved an assault on the Business esulting in a permanent injury. The alleged assailant was premanently led from the Guild after he defaulted on the charge by failing to contest ie second instance appears to have involved the usurpation of the author- the Guild President and Business Agent by the Guild Vice-President when e-President signed an agreement obligating a majority of the employees nted by the Guild to perform additional work without extra compensation n announced the agreement over the Track's loudspeaker. The Vice-Presi- as fined $100.00 plus $626.05 in expenses and was disenfranchised as an r for two years.

:uel Clerks Guild of Massachusetts, Inc. and Louis Lanfranchi and Robert Stein, 3 MLC 1546

2. Refrain from giving any effect to the Decision of the Guild's Executive Committee on July 15, 1975, as ratified by its membership on October 4, 1975, to discipline Louis Lanfranchi and Robert Stein by the imposition of fines for conduct at the June 1, 1975 meeting of the Guild;

3. Refrain from initiating any further disciplinary action against Louis Lanfranchi and Robert Stein for their conduct at the June 1, 1975 meeting that is not in compliance with the foregoing Decision;

4. Notify Ogden Suffolk Downs, Inc. in writing that the Guild does not seek the dismissal of Louis Lanfranchi and Robert Stein for the reason that, pursuant to the disciplinary action taken against them by the Executive Committee on July 15, 1975, as ratified by the Guild membership on October 4, 1975, they are no longer members in good standing of the Guild;

5. Notify the Commission in writing within ten (10) days of the service of this Decision and Order of steps taken to comply therewith.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner