

**UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Louis D. Brandeis Center Coalition to Combat
Anti-Semitism,

Charging Party,

vs.

A Better NYLAG, chapter of the Association of
Legal Aid Attorneys, United Auto Workers Local
2325,

Respondent.

Charge of Discrimination

E.E.O.C. Case No.

Charging Party Louis D. Brandeis Center Coalition to Combat Anti-Semitism (“the Coalition”), by its attorneys, The Louis D. Brandeis Center for Human Rights Under Law, charges that Respondent A Better NYLAG, chapter of the Association of Legal Aid Attorneys, United Auto Workers Local 2325 (“the ABN”), has discriminated against the Charging Party’s members employed by the New York Legal Assistance Group (“NYLAG”) to whom the ABN owes a duty of fair representation, as follows:

CHARGE

Respondent the ABN has unlawfully discriminated against the Coalition’s Jewish members employed by NYLAG for whom the ABN is the exclusive bargaining agent (both ABN members and non-members) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c), the New York State Human Rights Law, N.Y. Exec. Law § 296, and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107, for the reasons stated in the Coalition’s contemporaneously filed complaint with the National Labor Relations Board, annexed hereto as Exhibit A and incorporated herein, to wit:

Within three-hundred days of the filing of this charge, the ABN (1) breached its duty of fair representation to the Coalition’s Jewish members and discriminated against them based on their religion, national origin and race (ethnicity) when, (2) with discriminatory animus,¹ the ABN opposed NYLAG’s efforts to protect its Jewish employees and the ABN’s members and non-members from a toxic work environment.

¹ See e.g., *McIntyre v. Longwood Cent. Sch. Dist.*, 380 F. App’x 44, 49 (2d Cir. 2010) (“[I]n order to establish a violation of Title VII or the ADEA by the [Union], McIntyre would have to show, at a minimum, that the union breached its duty of fair representation and that its actions were motivated by discriminatory animus.”); *Bledsoe v. New York City Transit Auth.*, 2024 WL 989845, at *2 (E.D.N.Y. Mar. 7, 2024), appeal dismissed (June 21, 2024) (“To make out a Title VII or ADA claim against the Union, Plaintiff must allege facts showing that it breached its duty

RELIEF REQUESTED

The Louis D. Brandeis Center Coalition to Combat Anti-Semitism, on behalf of its members who are NYLAG employees for whom the ABN is the exclusive bargaining agent and thus to whom the ABN owes a duty of fair representation (both members and non-members), requests that the EEOC find probable cause to believe that the ABN has violated Title VII by opposing NYLAG's good faith effort to protect Jewish employees from a toxic environment in the office; that such conduct discriminates against Jewish employees on the basis of their religion, national origin and race; that the EEOC should immediately proceed to seek injunctive relief and any other appropriate relief against such conduct in an appropriate court of law; and, in the absence of initiating such litigation, that EEOC issue a right to sue letter to the Charging Party authorizing it to seek such relief on its own behalf.

Dated: New York, New York
May 7, 2025

Respectfully submitted,



Rory Lancman, Senior Counsel
THE LOUIS D. BRANDEIS CENTER
FOR HUMAN RIGHTS UNDER LAW
Counsel for the Charging Party
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*I swear or affirm that I have read the above charge
and that it is true to the best of my knowledge, information and belief.*



Emma Enig, Executive Director
THE LOUIS D. BRANDEIS CENTER
COALITION TO COMBAT ANTI-SEMITISM
Charging Party

May 6, 2025

of fair representation ('DFR') to Plaintiff, and that the Union's 'actions were motivated by discriminatory animus.' *McIntyre*, 380 F. App'x at 49.'").

Exhibit

A

(NLRB Charge)

May 6, 2025

BY E-FILING ONLY

John D. Doyle, Jr., Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza
New York, New York 10278

Re: *A Better NYLAG*, Case No. _____

Dear Mr. Doyle,

The Louis D. Brandeis Center for Human Rights Under Law respectfully submits this position statement on behalf of the Charging Party, the Louis D. Brandeis Center Coalition to Combat Anti-Semitism (“the Coalition”). Charging Party’s members are employed by the New York Legal Assistance Group (“NYLAG”) and owed a duty of fair representation by their exclusive bargaining representative, A Better NYLAG (“the ABN”).¹ The Coalition has charged the ABN with violating its duty of fair representation pursuant to Sections 8(b)(1)(A), 8(b)(2), 8(b)(3), and 9(a) of the National Labor Relations Act (“NLRA”), by its active opposition to NYLAG’s effort to remedy an anti-Semitic working environment.²

INTRODUCTION

The October 7, 2023, terrorist attack in southern Israel precipitated an onslaught of anti-Israel advocacy in NYLAG’s offices that came to permeate the workplace. Many Jewish NYLAG employees complained that this advocacy had subjected them to anti-Semitic, discriminatory environment. In order to ensure a non-discriminatory work environment, NYLAG management promulgated a viewpoint-neutral policy prohibiting the display of “any posters or other postings regarding the Israel/Gaza conflict” in the office.

Rather than defend the right of these Jewish NYLAG employees in the ABN’s bargaining unit to be free from a toxic work environment – created in large part by the ABN’s own activities – the ABN went so far as to advocate against the very Jewish employees whom they purport to

¹ The ABN’s complete name is “A Better NYLAG, chapter of the Association of Legal Aid Attorneys, United Auto Workers Local 2325.”

² This position statement is based upon the facts known at this time. Charging Party reserves the right to amend or amplify this position statement and its underlying charge in the event further material facts are discovered.

represent. The ABN took actions to undermine NYLAG's efforts to protect Jewish employees. Specifically, the ABN filed an unfair labor practice charge against NYLAG with the National Labor Relations Board ("NLRB") accusing it of violating (1) and (5), and has continued to take actions opposing NYLAG's policy.³

PARTIES

The Coalition is a membership organization whose mission includes combating anti-Semitism in the workplace. Among its members are Jewish NYLAG employees to whom the ABN owes a duty of fair representation. The ABN was certified by the Board as the exclusive representative of all NYLAG employees in 2019.⁴ This includes Coalition members who are both ABN members and ABN non-members who are experiencing an unlawful anti-Semitic toxic work environment that NYLAG is obligated to remediate.⁵ For these Jewish NYLAG employees, Zionism and a deep connection to the Jewish state of Israel plays a central role in their Jewish identity, i.e., in their Jewish faith and their shared Jewish ancestry as the Jewish people. Celebrating the murder of Jews and advocating for the extinguishment of the Jewish state of Israel offends them not merely as decent human beings but, in particular, as Jews.

The ABN is a chapter of the Association of Legal Aid Attorneys, UAW Local 2325 ("ALAA"). The ABN is the exclusive bargaining representative for NYLAG's legal staff, including the Coalition's members, pursuant to a 2022-2025 collective bargaining agreement.⁶ Both the ABN and the ALAA are headquartered in New York City. NYLAG, although not a party to this proceeding, is a non-profit legal services provider in New York City.

STATUTE OF LIMITATIONS

Because the ABN's NLRB charge of an unfair labor practices, filed originally on June 20, 2024, and amended on August 16, 2024, is ongoing, it is a continuing violation of its duty of fair representation, satisfying the six-month statute of limitations imposed by 29 USCA § 160(b). Aside

³ The ABN's NLRB charge against NYLAG is designated Case 02-CA-345030.

⁴ Certification of Representative issued by the National Labor Relations Board on July 5, 2019 (02-RC-243013).

⁵ As the exclusive collective bargaining agent, the ABN owes a duty of fair representation to all of NYLAG's employees in the classifications covered by the collective bargaining agreement, which includes the Coalition members on whose behalf this complaint is filed. *See Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 200 (1944) ("The labor organization chosen to be the representative of the craft or class of employees is thus chosen to represent all of its members, regardless of their union affiliations or want of them."); *Int'l Ass'n of Machinists v. St.*, 367 U.S. 740, 761 (1961) ("[A] union's status as exclusive bargaining representative carries with it the duty fairly and equitably to represent all employees of the craft or class, union and nonunion."); *Int'l Union of Bricklayers & Allied Craftsmen Loc. No. 5 v. Hudson Valley Dist. Council Bricklayers & Allied Craftsmen Joint Benefit Funds*, 858 F. Supp. 373, 374, n.1 (S.D.N.Y. 1994) ("A labor organization also owes a duty of fair representation to all employees within the collective bargaining unit, regardless of union membership.").

⁶ 29 U.S.C. § 159(a) ("Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.")

from the application of any “continuing violation” doctrine to the Coalition’s claim, at least one concrete action opposing the NYLAG rule has occurred within the last six months, i.e., on November 7, 2024, when the ABN staged a protest in NYLAG offices and delivered a letter to NYLAG management opposing NYLAG’s efforts to support Jewish employees.

FACTS

After the October 7, 2023, Hamas terrorist attack in southern Israel that killed more than 1,200 people and resulted in the kidnapping of hundreds more, NYLAG’s workplace became engulfed in anti-Israel and anti-Semitic expression and advocacy, driven in large part by the ABN. This included vile expressions of anti-Israel hatred and anti-Semitism via resolutions, formal statements, social media posts, rallies, and in-office displays of posters, buttons, garments, etc. demonizing Israel, supporting the destruction of the Jewish state, lauding Hamas, minimizing the October 7th attacks, and/or promoting violence against Jews.

ABN members have harassed NYLAG’s Jewish employees from almost the moment Hamas attacked Israel on October 7, 2023. For example, less than a week after the October 7th attack, on October 12, 2023, NYLAG’s President and CEO sent an organization-wide email expressing sympathy and concern for Jewish employees fearful that an anti-Israel protest planned for the next day (a self-styled, “global day of rage”) posed safety concerns for the Jewish community. This e-mail followed a briefing from the New York Police Department “in direct response to *abhorrent and devastating* social media posts and threats about violence tomorrow.” (emphasis in original). NYLAG also offered its concerned employees the opportunity to work from home to avoid the protest and its effects.

The next day, October 13, 2023, still not one week after the terrorist attack, the ABN responded with an email of its own focusing on “the illegal Israeli occupation and war crimes against Palestinian,” blaming the NYPD’s supposed motivation to “turn out in force” at the protest on the NYPD being “frequent collaborators with the IDF,” and attacking NYLAG management.

Several Jewish NYLAG employees and ABN members objected to the ABN’s email. One such objection was sent on October 15, 2023, and included:

I do not know who you presume to represent, but this is certainly does not represent my view or the views of other union members I spoke to after you sent this out without advising or consulting us. At a time where tensions are extremely high, a “global day of rage” was planned on Friday. Your personal assessment of the threat or lack of threat notwithstanding, I personally was a part of text message threads where my fellow Jews discussed what precautions we needed to take to stay safe. I thank [NYLAG President and CEO] for her concern for our safety and comfort in a difficult and scary time for some of us.

Another Jewish NYLAG employee and ABN member emailed ABN leadership on October 16, 2023 (emphasis in original):

[ABN], your personal assessment as to the lack of threat on this global day of rage, are, at its very best, misguided. Thank god that recorded attacks were minimal, however, the calls for the annihilation of the Jewish People still rung out. [ABN], were you aware that my not-even two-year-old daughter couldn't go to her classes on Friday, despite the increase of police presence, for fear of her physical safety? That my husband couldn't wear a kippah to work on Friday, for fear of being attacked? To add a bit more helpful context, my family was in Israel when the terrorist attacks occurred. We were there for when the war broke out. We spent days going in and out of bomb shelters. There were decisions I had to make, as a mom of a young toddler, while 6.5 months pregnant with my second child, that no one should be in the position to make. *And we are the lucky ones.*

Email titled "Union Response to Management E-mail," Oct. 16, 2023.

Anti-Israel animus came to permeate the NYLAG workplace. As of the date of this Charge, ABN members, with the ABN's full support, encouragement, and defense, display posters, flyers, and buttons excusing, glorifying, and threatening violence and terrorism against Jews. One such button proclaims, "Resisting colonialism is not terrorism":



Another poster warns, “RESPECT EXISTENCE OR EXPECT RESISTANCE”:

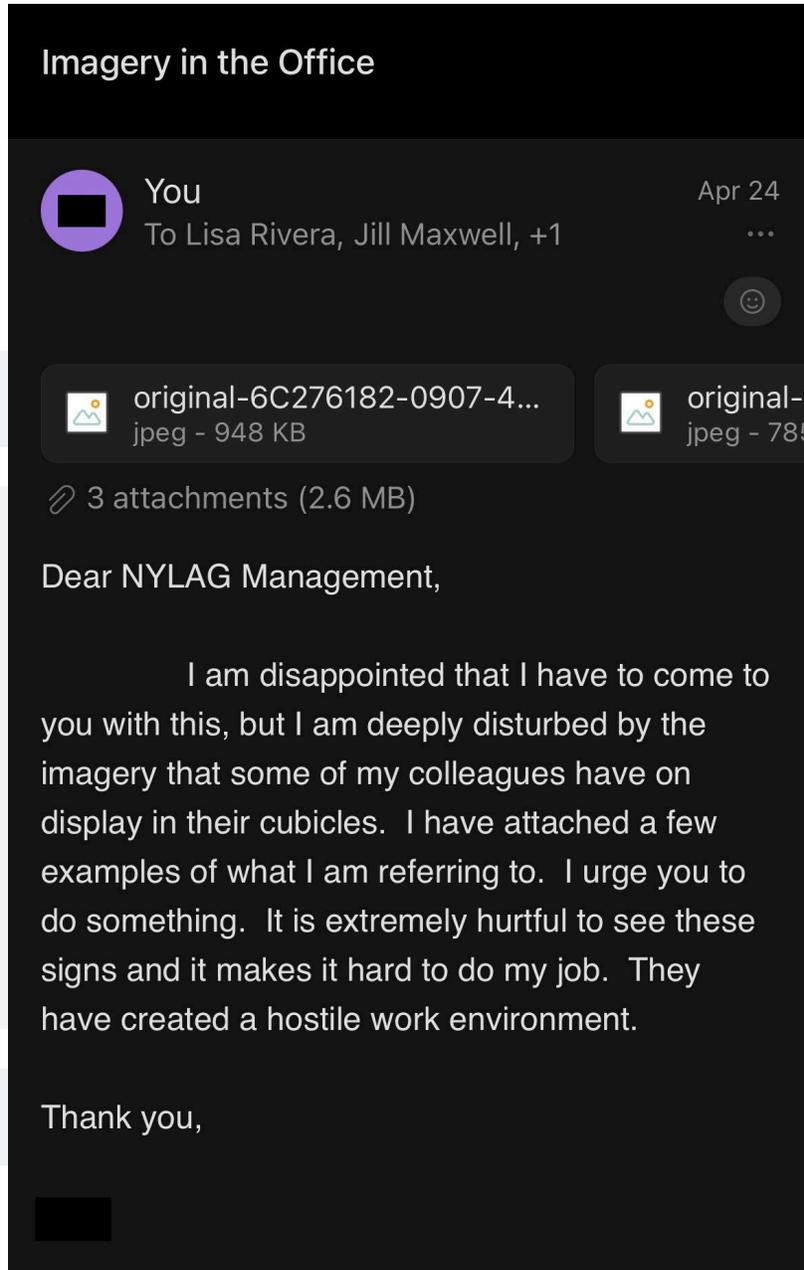


Yet another poster displays a figure with an outstretched arm over her head brandishing a missile, declaring “LONG LIVE THE RESISTANCE!”:



This activity created a toxic environment for NYLAG’s Jewish employees, including Coalition members. In emails and other communications, these Jewish employees and ABN members complained to NYLAG management that this activity created an anti-Semitic, discriminatory hostile environment in violation of federal, state, and local anti-discrimination laws, and implored NYLAG management to protect them.

For example, on April 24, 2024, a Jewish NYLAG employee and ABN member emailed NYLAG management (sender redacted):



Two weeks later, on May 7, 2024, this NYLAG employee and ABN member again emailed NYLAG management to seek protection from the anti-Semitic toxic environment that the posters so significantly contributed to, including posters with images of a Palestinian state whose

boundaries cover all of Israel, and calls to “ABOLISH THE SETTLER STATE” and for INTIFADA NOW”:

As I wrote in my initial email, the imagery in the office relating to what is going on in the Middle East has created a hostile work environment. There are additional hateful images since my last email (including the first one below). Rather than discuss them all, I will focus on those that I believe are legally actionable in that they violate my right to not work in a hostile environment.



These three images call for a destruction of the Jewish State of Israel. After the massacre, rape, and kidnapping of nearly 1500 Jews in Israel by Hamas, an organization that has murdered countless Jews and ordered for the murder of Jews in Israel and around the world, the rhetoric in these images is not vague and open to interpretation. They are rallying cries for murdering Jews. As a Jew, I feel threatened when I see these and depressed that they surround my workplace.

Email titled “Imagery in Office,” May 7, 2024.

Acting to remedy this anti-Semitic toxic working environment, NYLAG's general counsel announced on May 10, 2024, a policy prohibiting the display of "any posters or other postings regarding the Israel/Gaza conflict" in the office:

Dear Colleagues,

We understand that the continued conflict in the Middle East is extremely distressing to many of our staff and clients, and that many are deeply impacted by the Israel/Gaza conflict in various ways. It is with this in mind, and to ensure a safe and welcoming environment for everyone, that effective immediately, we will not allow any posters or other postings regarding the Israel/Gaza conflict to be displayed anywhere in NYLAG's offices.

One of our core values here at NYLAG is that we strive to create a welcoming and inclusive work environment. We are implementing this policy to ensure that all of our staff and clients feel safe and welcome, regardless of religion, race, or ethnicity.

If you have a posting up that falls within these guidelines, please take it down immediately, and no later than the close of business of Tuesday, May 21. If you are out of the office and cannot take down a poster, feel free to email me and I can take it down for you. Also, feel free to let me know if you have any questions about this policy.

We appreciate everyone's cooperation with this policy.

NYLAG's action was consistent with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c), the New York State Human Rights Law, N.Y. Exec. Law § 296, and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107, each of which prohibits an anti-Semitic hostile environment in the workplace. Many Jewish NYLAG employees complained to NYLAG management that the proliferation of anti-Israel posters, pins, buttons, and flyers in the office, particularly in the context of the October 7, 2023, terrorist attacks in Israel and the continued holding, and periodic execution, of Israeli hostages by the Hamas terrorist organization in Gaza, created a toxic working environment for them.

The ABN's anti-Israel crusade at NYLAG has never abated, and the ABN has embraced the posters' violent anti-Semitic rhetoric. For example, one poster used by the ABN as an exemplar of the policy's purported injustice proclaims, "INTIFADA NOW," an exhortation to terrorist attacks on Jews:



ABN "Statement on NYLAG Silencing Workers' Speech," June 10, 2024.

In fact, the speech conveyed by those posters and imagery has absolutely nothing to do with working conditions at NYLAG; nothing to do with wages, benefits, job security, retirement, workload, discipline, promotion, opportunity for advancement, unequal treatment of employees, or anything that would conceivably improve any aspect of NYLAG's workplace.

ABN's support for advocacy in this context – including a poster demanding INTIFADA NOW – frightened many Jewish NYLAG employees. NYLAG's rule prohibiting the display of "any posters or other postings regarding the Israel/Gaza conflict" in the office is an attempt to protect those Jewish employees – ABN's members and non-members who are owed a duty of fair representation – from an anti-Semitic work environment.

NYLAG's actions are far from sufficient to remedy the anti-Semitic environment that exists in its workplace, but its poster policy is a good faith effort to do so. The ABN had a duty to all of its members to support – and certainly not to oppose —good faith efforts to ensure an inclusive, non-discriminatory work environment.

Yet rather than stand with its Jewish employees who are subjected to these expressions of support for the murder of Jews and the destruction of the Jewish state, the ABN responded to NYLAG’s rule with a statement accusing management of “flagrantly violating the National Labor Relations Act, which protects our right to protest unfair working conditions,” and promised to file “an Unfair Labor Practice charge with the National Labor Relations Board.”

That NLRB Charge was filed on June 20, 2024 (and amended on August 16, 2024), alleging a violation of the ABN members’ right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection,” 29 U.S.C. § 157. The Charge reads as follows:

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about May 10, 2024, a date within the last six months, the above—named employer has violated the Act by issuing an unlawful and overbroad workplace policy regarding postings in union-represented employees’ cubicles, and by suppressing the protected concerted speech of union members. Since a date within the last six months, the above-named Employer has violated the Act by refusing to furnish the information requested by Association of Legal Aid Attorneys, UAW, Local 2325 (AFL-CLO), the collective bargaining representative of the Employer’s employees.

A Better NYLAG vs. New York Legal Assistance Group, N.L.R.B. 02-CA-345030 (June 20, 2024; amended Aug. 16, 2024).

While the ABN presses ahead with its NLRB charge, the ABN has continued to take action to oppose NYLAG’s rule protecting the ABN’s Jewish members experiencing a toxic work environment. On September 17, 2024, the ABN conducted a “lunchtime picket” outside NYLAG’s office to protest NYLAG’s rule. On October 21, 2024, the ABN protested the NYLAG policy in the office, and documented doing so on its Instagram account, by “wearing their keffiyehs and flying flags in solidarity with Palestinians.” On November 7, 2024, the ABN delivered a letter to NYLAG management and organized a protest in NYLAG’s offices against NYLAG’s rule.

NYLAG management has tried to explain to the ABN that its policy is necessary to fulfill its “obligation to all our staff to maintain a safe and inclusive work environment,” including the Jewish NYLAG employees to whom the ABN owes a duty of fair representation:

Dear Executive Board Members,

We have reviewed the email and all of the statements [opposing the policy]. I also understand that you discussed the Union meeting and

poster policy more broadly at the monthly Union-Management meeting this past Friday.

While we consider, and have considered, the perspectives you have uplifted, we also expressed to you that this fails to consider the complete picture. We have also heard from our colleagues, including fellow members of the collective bargaining unit, who feel harmed by some of the displays. We have meaningfully engaged with staff members who represent a variety of viewpoints across the organization. We have an obligation to all our staff to maintain a safe and inclusive work environment, and do not discount anyone's perspective. As we have said, the poster policy seeks to respect all staff's right to come to work without being forced to engage in conversations, instead letting people select how and when they want to engage. Furthermore, our clients deserve to come into an environment that is safe and welcoming.

This policy is rooted in our obligations and responsibilities to all who work at and use NYLAG's spaces. We seek to maintain a workplace where our staff can work together, so that we can fulfill our mission here in New York. The reasons for creating the policy have not changed; thus, the policy remains in place, and we will enforce it.

Best,

Randal

Randal S. Jeffrey
General Counsel

Pronouns: He, Him, His

Email from NYLAG General Counsel to ABN Executive Board, Sept. 9, 2024.

The ABN's advocacy against NYLAG's anti-discrimination efforts has further exacerbated the environment in the office, as described by a Jewish ABN member in a letter to the ABN executive board after the ABN announced its intention to hold a demonstration against the policy:

ABN Board,

With the post this morning on the ABN official Instagram account reposting UAW for Palestine, threatening union activity or

demonstration on October 7, I am no longer able to ignore the blatant antisemitism of this bargaining unit.

Rather than accede to what you know to be an entirely legal and permissible rule that employees may not place posters related to the current war in the region that was put in place in order to avoid disruption and distraction in the office, you have escalated the issue to an intolerable level. Most recently, you held a picket outside of the office where speakers employed blatantly antisemitic [sic] tropes to decry NYLAG management's policy, including that the policy originated from, and is supported by a Zionist cabal on the board of directors. That is just what is posted online on your Instagram account. You are now threatening to take some action on the most traumatizing day for Jews and Israelis in recent memory.

You have gone way past the point of making this office a hostile work environment. Please consider this an official complaint of a violation of UAW Ethical Practice Codes preamble, section 1, and section 5, namely discrimination based on national origin and religion, vilifying other union members, acting in a manner against and injurious to other union members by creating an impermissible hostile working environment based on national origin and religion.

I was on the executive board of my former bargaining unit at Northeast New Jersey Legal Services UAW NOLSW 2320 for 7 years, serving as vice president and president of the bargaining unit. As best as I could, I strove to represent the interests of all members and to make all members comfortable, and successful, at work even if I may have disagreed with their point of view. You are intentionally seeking to harm members of the unit for your own personal political purposes which have absolutely nothing to do with working conditions of the bargaining unit members. It is not the way to run a union - solidarity is a two-way street.

I hope that you will take this complaint seriously and return to working to advance the interests of all union members, and that there will be no need for further action. I can assure you that I am not the only member that feels this way.

-- xxxx

Email titled "ABN antisemitism," Sept. 24, 2024.

On October 25, 2024, a NYLAG employee and ABN member responded to an ABN online survey by explicitly complaining that the ABN's opposition to the NYLAG poster policy violated the ABN's duty of fair representation, "especially [to] those who are Jewish with Zionist views":

How do you feel about your ability to express yourself and your views in the workplace?

The posters display that NYLAG were/are inappropriate for a diverse work setting. Some of the posters have displayed violence and were implicitly or explicitly antisemitic. The union is not upholding its duty of fair representation to all its members, especially those who are Jewish with Zionist views. Zionism is the right of the Jewish people, who have indigenous rights in Israel, to self determination, just like any other people. If I express this view to the union, I fear retaliation. The union has created a hostile work environment. It is difficult for me to work around these posters and attitudes. In 2023, in the U.S., Jewish people were the victims of more hate crimes than any other group. (Relative to their small numbers). I studied peace and conflict resolution. I believe in coexistence and peace and I hope the Union takes these concerns, statistics, and concerns of Jewish members, and our allies, seriously. I am very open to respectful dialogue and I hope we can resolve this issue. I have much empathy for the Palestinian people and I wish that this empathy was shown to Jewish and Israeli people, who are also suffering.

NYLAG Employee/ABN Member Survey Response, Oct. 25, 2024.

Eleven months after NYLAG first promulgated its poster policy, a Jewish ABN member wrote to NYLAG management pleading with NYLAG to actually enforce its poster policy, including stating:

These signs demonstrate propaganda meant to demonize Jews and/or Zionists and Israel. I am unable to work in this environment, so I often work in areas of the office without so many signs. These signs are having the discriminatory effect of pushing Jewish people and/or Zionists out of these spaces. As a Jewish person, I should not have to work in such close proximity to signs that direct hatred towards me.

Email titled "Poster policy violations [...]," Mar. 21, 2025.

LEGAL ARGUMENT⁷

The ABN is the exclusive bargaining representative for NYLAG staff pursuant to Section 9(a) of the NLRA, 29 U.S.C. § 159(a), and as such it owes the Coalition members a duty of fair representation.

The NLRA gave “[e]mployees ... 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,” 29 U.S.C. § 157, and empowered those unions to be “the exclusive representatives of all the employees in such unit,” 29 U.S.C. § 159(a).

The duty to represent all employees fairly was established by the Supreme Court in a series of cases where the union was alleged to have discriminated against some of its members in favor of others. See e.g., *Ford Motor Co. v. Huffman*, 345 U.S. 330, 336-338 (1953) (“Their statutory obligation to represent all members of an appropriate unit requires them to make an honest effort to serve the interests of all of those members, without hostility to any.”)

The National Labor Relations Board has consistently reiterated and reinforced this duty of fair representation, extending its application to NLRA provisions making it an unfair labor practice for a union “to restrain or coerce ... employees in the exercise of the rights” to form and participate in unions, Section 8(b)(1)(A); “to cause or attempt to cause an employer to discriminate against an employee in violation of” the prohibition against discrimination aimed at encouraging or discouraging membership in a union, Section 8(b)(2); and “to refuse to bargain collectively with an employer, 8(b)(3).

This doctrine of the duty of fair representation was derived from the Supreme Court's decision in three companion cases: *Steele v. Louisville & Nashville Railroad Co.*; *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen*; and *Wallace Corporation v. N.L.R.B.* In *Steele* and *Tunstall*, both of which involved racial discrimination by a union which was statutory representative under the Railway Labor Act, the Court concluded that such a representative “cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft.” In *Wallace*, which did not involve race discrimination, the Court held that the same duty of fair representation was required of bargaining representatives selected under the National Labor Relations Act.

⁷ Separately, and annexed hereto as Exhibit A, the Coalition has filed with the United States Equal Employment Opportunity Commission a discrimination charge against the ABN alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c); the New York State Human Rights Law, N.Y. Exec. Law § 296; and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107.

The duty of fair representation has become the touchstone of the Board's concern with invidious discrimination by unions. For example, it is well established that a labor organization's rejection of an employee's grievance solely because of his or her race breaches the duty of fair representation and violates Section 8(b)(1)(A), 8(b)(2), and 8(b)(3) of the Act. Similarly, we have held that a union's refusal to process grievances filed to protest an employer's segregated plant facilities constitutes a violation of Section 8(b)(1)(A).

Handy Andy, 228 NLRB 447, 455 (1977) (internal footnotes omitted); *see also Indep. Metal Workers, Locs. 1 & 2 (Hughes Tool Co.)*, 147 NLRB 1573, 1574 (1964) (“Local No. 1, by its failure to entertain in any fashion or to consider the grievance filed by an employee in the bargaining unit, Ivory Davis, and by its outright rejection of Davis' grievance for reasons of race, violated Section 8(b)(1)(A), 8(b)(2), and 8(b)(3) of the Act.”); *Loc. 106, Glass Bottle Blowers*, 210 NLRB 943, 944 (1974) (union locals engaged in sex discrimination in membership and the processing of grievances violate Sections 8(b)(1)(A) and 2(6) and (7) of the NLRA).

Unions thus have a duty of fair representation to all of their members, i.e., a duty to “serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct,” *Vaca v. Sipes*, 386 U.S. 171, 177 (1967) (emphasis added).

It is significant that the duty of fair representation was born of the particular need to protect members from discrimination by their own union in the enforcement of their union rights *vis a vis* their employers because of their race, ethnicity, religion, etc. *See e.g., Samaritan Med. Ctr. v. Nat'l Lab. Rels. Bd.*, 858 F.3d 617, 630 (1st Cir. 2017), *quoting Vaca*, 386 U.S. at 177 (“Indeed, the doctrine has its origins in ‘a series of cases involving alleged racial discrimination by unions.’”).

The elements of a duty of fair representation claim in these circumstances is well-established:

To plead a breach of a union's duty of fair representation, “the challenging members must establish two elements. First, they must prove that the union's actions or inactions ‘are either arbitrary, discriminatory, or in bad faith.’” *Vaughn v. Air Line Pilots Ass'n Int'l*, 604 F.3d 703, 709 (2d Cir. 2010) (emphasis in original) (quoting *Air Lines Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65, 67 (1991)). “Second, the challenging members must ‘demonstrate a causal connection between the union's wrongful conduct and their injuries.’” *Id.* (emphasis in original) (quoting *Spellacy v. Airline Pilots Assn' Int'l*, 156 F.3d 120, 126 (2d Cir. 1998)).

Saunders v. New York Convention Ctr. Operating Corp., 2021 WL 4340793, at *9 (S.D.N.Y. Sept. 23, 2021).

A.

*The ABN's Opposition to the Poster Policy is Discriminatory
Against NYLAG's Jewish Employees for Whom Such Conduct Has
Created an Anti-Semitic, Discriminatory Toxic Work Environment*

Despite complaints from Jewish NYLAG employees in the ABN bargaining unit about an anti-Semitic environment in NYLAG's offices (driven by the ABN's own relentless anti-Israel advocacy), the ABN opposed – and opposes to this day – NYLAG's content-neutral efforts to remediate that toxic environment.

The ABN is choosing to support discrimination against Jewish NYLAG employees in the bargaining unit to whom it owes a duty of fair representation and who are enduring an anti-Semitic environment that NYLAG's policy is attempting to remediate.

The union cannot throw its members of one protected identity under the bus in favor of supporting other members' "right" to discriminate against or torment them. *See e.g., Loc. Union No. 12, United Rubber, Cork, Linoleum & Plastic Workers of Am., AFL-CIO v. N. L. R. B.*, 368 F.2d 12, 19 (5th Cir. 1966) (where union "actively opposed desegregation of shower and toilet facilities," it failed its "statutory obligation . . . 'to make an honest effort to serve the interests of all of those members, without hostility to any.'" quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953)); *Woods v. Graphic Commc'ns*, 925 F.2d 1195, 1203 (9th Cir. 1991) ("Racial discrimination in grievance processing constitutes a primary violation of the duty.")⁸

Yet that is exactly what the ABN is doing: choosing to discriminate against its many Jewish members and non-members in its bargaining unity who are experiencing a discriminatory toxic environment in fighting to allow that discriminatory toxic environment to continue unremedied.

B.

*The "Speech" Which the ABN is Defending
is Not Protected Concerted Action*

The ABN's efforts to undermine NYLAG's anti-discrimination practices violate the ABN's duty of fair representation to those Jewish ABN members and non-members employed by NYLAG who have complained that these postings have created a toxic work environment. The ABN's

⁸ Of course, the duty of fair representation is not limited to the faithful processing of members' grievances against their employer: "The duty of fair representation applies to all union activity and in all 'instances in which a union is acting in its representative role.'" *Agosto v. Corr. Officers Benev. Ass'n*, 107 F. Supp. 2d 294, 303 (S.D.N.Y. 2000) (quoting *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65, 77 (1991)).

insistence that some of its members should be allowed to harass other ABN members is unrelated to any legitimate union objective.

The ABN's decision to oppose NYLAG's effort to remediate an anti-Semitic work environment is "unrelated to legitimate union objectives," *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of Am. v. Lockridge*, 403 U.S. 274, 301 (1971), such as protecting its members' right under the NLRA "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157.

Again, the "speech" at issue has nothing to do with improving working conditions for NYLAG employees. It is not protected conduct designed for the employees' "mutual aid or protection":

Whether an employee's activity falls within the ambit of the mutual aid or protection clause, in turn, "focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to 'improve terms and conditions of employment or otherwise improve their lot as employees.'" *Fresh & Easy*, 361 NLRB at 153 (emphasis in original) (quoting *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978)).

Home Depot USA, Inc., 373 NLRB No. 25, pg. 8 (Feb. 21, 2024).

In *Home Depot*, a store salesman who was subjected to racially discriminatory behavior from his supervisor and who discussed this conduct with his co-workers and complained about it to management, regularly marked his Home Depot apron with "BLM," the initials of the Black Lives Matter movement for racial justice and equality. After the store's Black History Month display was vandalized, the salesman and his co-workers specifically urged management to respond with "'a storewide conversation' about racism so that 'people of color [would] feel safe at this store,'" which Home Depot management rejected. *Home Depot*, at pg. 3.

At a meeting with the salesman to discuss the racially discriminatory behavior he experienced and witnessed, he was directed to cease marking his apron with "BLM." The following exchange occurred:

MANAGER: Okay. You don't think that there's any other way that you could show your support for people of color or [B]lack associates or anything like that without having the actual Black Lives Matter racial cause symbol on your apron? There's no other way that you could do that?

MORALES: There's plenty of other ways, but this is the best way.

MORALES: I said I think I'm leading a great example by refusing to take BLM from my apron. I think that is something that people need to understand. And me as a person of color, coming to you, having these meetings so that you guys can listen, and it doesn't seem like there's any resolution from what I can see. So that -- that's what I'm seeing. That's what I'm thinking about right now.

MANAGER: Sure, I get that but what you're telling me is that there's only one resolution from your perspective. The only resolution in your mind is to keep the BLM on your apron.

MORALES: It's the one that's going to make the biggest impact, yes.

MANAGER: Okay. As opposed to coming up with a different idea or trying to come a different way to show respect to everyone but to celebrate [B]lack leaders or associates of color? Like, there's no other option? That's the only option?

MORALES: And then have it taken down, ripped apart? Because that [the Black History Month display] was an option. That was an alternative, the poster that was put up, the cards. They were torn apart. And that was an alternative, so I'm really not seeing the alternative here.

Home Depot, at pgs. 5-6.

Rather than remove the “BLM” from his apron, the salesman quit.

The NLRB General Counsel framed the complaint against Home Depot squarely as one where an employer interfered with an employee’s effort to address and improve working conditions *at the store where the complainant was employed*:

Beginning about August 2020, Respondent's employee Antonio Morales engaged in concerted activities for the purposes of mutual aid and protection related to racial policies and practices at the New Brighton Facility; this included displaying the lettering “BLM” on [their] apron, writing emails, engaging in various conversations with coworkers, supervisors, and managers about subjects such as ongoing discrimination and harassment, and/or engaging in other BLM-related protected concerted activity.

Home Depot, at pg. 21 (NLRB Complaint ¶ 5(a))

The NLRB had no problem concluding that the Home Depot employee wore the BLM initials on his apron as a logical outgrowth of opposing the discrimination that he and his co-workers experienced at his Home Depot store, and thereby satisfied “the *goal* of concerted activity; chiefly, whether the employee or employees involved are seeking to ‘improve terms and conditions of employment or otherwise improve their lot as employees.’” *Fresh & Easy*, 361 NLRB at 153 (emphasis in original) (quoting *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978)). *Home Depot*, at pg. 8.

The NLRA did not protect the salesman in *Home Depot* because his BLM markings sought a better world, but a better workplace; a workplace where he and his colleagues would no longer experience racially discriminatory behavior.

The NLRB in *Home Depot* explained why the administrative law judge below erred in finding that the BLM insignia only represented the kind of more generalized, societal concerns that are unprotected by the NLRA’s “mutual aid” protection:

In finding that the BLM marking was not displayed for the purpose of mutual aid or protection, the judge primarily relied on generalized evidence that “the BLM messaging originated, and is primarily used, to address the unjustified killings of [B]lack individuals by law enforcement and vigilantes. To the extent the message is being used for reasons beyond that, it operates as a political umbrella for societal concerns and relates to the workplace only in the sense that workplaces are part of society.” We reject that reasoning. Neither the origins of “BLM messaging,” nor its primary use, dictate how the BLM marking may be used or understood in a particular workplace context (or, indeed, in a broader setting). The judge erred by discounting the evidence discussed above establishing that, at least by the time that Morales refused to remove the BLM marking in February, a purpose for their display of the BLM marking--objectively speaking--was to further protest racial discrimination *at the Respondent's store* and the Respondent's failure to adequately address it.

Home Depot, at pg. 12 (emphasis added).

Here, unlike in *Home Depot*, there is no nexus between postings concerning the war in Israel and *any* term or condition of employment at NYLAG. There is no employment-based purpose in the “speech” that the ABN is trying to defend here. Instead, the ABN needs to defend its Jewish members’ and other employees’ right to a workplace that is not an anti-Semitic toxic environment.

The postering that the ABN's members insist on engaging in, and that the ABN insists on defending at the expense of many Jewish members of the NYLAG collective bargaining unit, is similar to the letter-writing campaign that the NLRB, and the First Circuit Court of Appeals, considered and rejected as a form of "mutual aid," in *Five Star Transportation, Inc.*, 349 NLRB 42, 44 (2007), enfd. 522 F.3d 46 (1st Cir. 2008)]. There, letters written by school bus drivers opposing the award of the student transportation contract to the company that ultimately won the contract and refused to hire those drivers were held to not represent concerted action for the purpose of mutual aid or protection where the letters "focused solely on general safety concerns and did not indicate that their concerns were related to the safety of the drivers as opposed to others." *Id.*, 349 NLRB at, 44. The NLRB noted that "merely raising safety or quality of care concerns on behalf of nonemployee third parties is not protected conduct under the Act." *Id.*

Here, the subject matter of the posters and displays in question have no relationship to NYLAG, or to working conditions at NYLAG, least of all in any "common concerns involving their terms and conditions of employment." *Id.*, at 45.

RELIEF REQUESTED

The Louis D. Brandeis Center Coalition to Combat Anti-Semitism, on behalf of its members who are NYLAG employees for whom the ABN is the exclusive bargaining agent, requests that the Board (1) declare that the ABN has violated its duty of fair representation owed to the Coalition's members pursuant to NLRA Sections 8(b)(1)(A), 8(b)(2), 8(b)(3), and 9(a), and (2) enjoin the ABN from further interference with NYLAG's efforts to comply with its obligation to ensure a non-discriminatory environment for its work force

Respectfully submitted,



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