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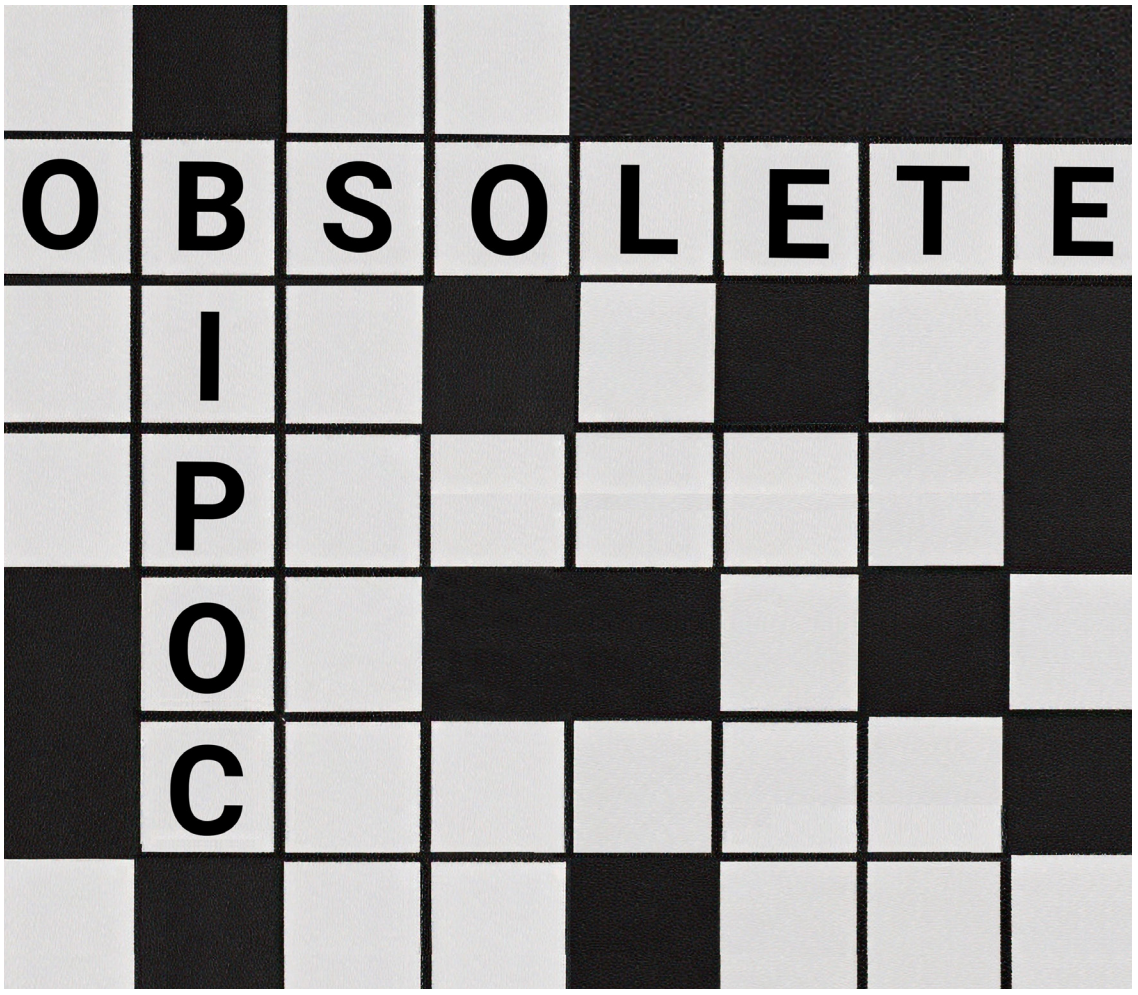
PERSPECTIVE

The future of discrimination in unions with BIPOC representation

By K. Chike Odiwe



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A white teacher in Sacramento County has sued his union for reserving one seat on its governing board for a non-white member.

There are appropriate instances where diversity is necessary versus acts that fall in line with blatant discrimination. The line between the promotion of diversity and discrimination are becoming more widespread in courts across California.

Isaac Newman, a high school social science teacher, said he wanted to run for a newly created position on the Elk Grove Education Association last December. The union barred Newman from applying because the union made the position a "BIPOC seat," a year prior, as such, the position had been limited to members who were Black, Indigenous, or other people of color (BIPOC).

There is a school of thought that embraces the BIPOC agenda. It is the notion that to move racial relation dynamics forward, there must be innovative methods that explicitly center the experiences of Black, Indigenous, and People of Color (BIPOC), who come across multiple forms of relegation that must be adopted. Proponents of the agenda argue that intersectional mixed methods research includes four strategies: (1) research questions that prioritize the multiplication of marginalized BIPOC individuals, (2) that the multiple realities of BIPOC individuals are honored and embraced, (3) identity-related variables, such as self-reported discrimination are studied and (4) scholars engage in critical reflexivity.

During a statement announcing his lawsuit, Newman said, "Union officials apparently believe that the best solution to America's shameful history of discrimination is more discrimination." Newman wanted to join the board to oppose "the (Elk Grove Unified School) District's recent adoption of what he believes to be aggressive and unnecessary Diversity, Equity & Inclusion ('DEI') policies."

DEI policies are controversial because people disagree about whether they are necessary as well as what their eventual consequences may be. Opposition is demonstrated the strongest from people who belong to advantaged groups that benefit from the status quo (e.g., men and racial majority groups).

Social inequality exists around the world, along various group dimensions such as race, gender, and socio-economic status. Organizations have developed policies and programs to combat inequality in two ways Bartels, L. K., Nadler, J. T., Kufahl, K., & Pyatt, J. (2013). Fifty years after the Civil Rights Act: Diversity-management practices in the field. Industrial and Organizational Psychology, 6, 450–457; Iyer, A. (2009). First, they evaluate existing policies and procedures to id-

entify and eliminate any bias or discrimination that undermines equal opportunities for all groups. Second, they employ strategies to increase the representation, status, and power of historically disadvantaged groups, and ensure that all employees feel supported and welcomed by the organization in being their authentic selves. Such diversity, equity, and inclusion (DEI) policies can include various initiatives, including (a) targeted recruitment programs to increase the number of disadvantaged group members who apply for jobs and promotions; (b) targeted training and mentoring programs to improve opportunities for disadvantaged groups; (c) preferential treatment in selection decisions (e.g., hiring and promotion), for example, by using group membership as a "tie-breaker" to choose between equally qualified candidates; and (d) diversity training to raise awareness about bias, inequality, and strategies for change.

Contesting DEI has become a trademark of conservative political programs such as Project 2025, which would seek to abolish remaining legal protections for abortion, sexual orientation, and gender identity during the first six months of a new Republican administration.

When asked about the lawsuit, the union's president, James Sutter, said it was a case "backed by an outside extremist group to sow fear and division in our community." Pointedly, he did not say why the union had set racial criteria for the seat, one of 11 on its governing board.

It appears that the Legislature is thinking in group terms. However, it is clear that the California Constitution protects the right of individuals to equal treatment.

The issues may be slightly different in Newman's lawsuit. Newman is challenging an action by a union rather than state law. Still, the policy question is similar. The determination of whether a union or a state-regulated corporate board can promote diversity by reserving one or more positions for members of groups who have been previously underrepresented.

William Gould, a Stanford labor law professor, and former chairman of the National Labor Relations Board, said past court rulings have allowed companies and unions to give some preference to non-whites. Gould cited the Supreme Court's 1979 ruling in *United Steelworkers v. Weber*, upholding a company's union contract that required hiring a certain number of Black workers until they equaled their share of the local workforce.

"But I have some doubt as to whether any of these programs aimed at diversity can survive" in the current Supreme Court, Gould told the Chronicle. He cited the court's ruling last year barring affirmative action admissions at colleges and universities.

It is true that the nation has arrived at the end of affirmative action. Institutions of higher learning must move beyond a single-minded focus on educational diversity, which admits students of color mainly to enhance the classroom experiences of their white classmates and then ignores what they may need to maximize both engagement and retention. The idea of affirmative action programs needs an immediate update; they should take contemporary issues of race and racism into account, as well as the lived realities of academically qualified students of color.

Both state and federal law prohibit so-called 'reverse discrimination,' so it appears to me that they have a case, said Reuel Schiller, a labor law professor at UC College of the Law in San Francisco. He said the laws apply to labor unions as well as the government.

The constitutional solution appears to be clear. There are more than enough qualified candidates of color to the point where race-based determinations can become obsolete.

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