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JBM, Inc. d/b/a Bluegrass Satellite, Inc. and Charles Kyle. Case 9–CA–42410

April 27, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

The General Counsel seeks summary judgment in this case on the ground that there are no genuine issues of material fact as to the allegations of the complaint, and that the Board should find, as a matter of law, that the Respondent has violated Section 8(a)(1) of the Act by maintaining a rule requiring that employees authorize union dues checkoff as a condition of employment.

Pursuant to a charge filed by Charles Kyle on October 26, 2005, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 2006, alleging that the Respondent, JBM, Inc. d/b/a Bluegrass Satellite, Inc., has violated Section 8(a)(1) of the Act by maintaining a rule in its policy manual that interferes with, restrains, and coerces employees in the exercise of their Section 7 rights. The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and raising certain affirmative defenses.

On March 8, 2006, the General Counsel filed a motion to transfer the case to the Board and Motion for Summary Judgment, and a memorandum in support. On March 13, 2006, the Board issued an Order transferring the proceeding to the Board and Notice to Show Cause why the Motion for Summary Judgment should not be granted. On March 22, 2006, the Respondent filed a brief in opposition to the General Counsel's motions. After receiving the Board's Order and Notice to Show Cause, the Respondent requested that its previously submitted brief in opposition to the General Counsel's motions be treated as its response to the Notice to Show Cause. The Board granted the Respondent's request on April 4, 2006.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges that since about April 27, 2005, and at all times thereafter, the Respondent has maintained the following rule (the dues rule) in its policy manual issued to employees:

In order to begin your employment all records listed below must be completed, inspected and on file at the corporate office:

....

24. Local 707 NPWU dues form.

The complaint further alleges that by maintaining the dues rule the Respondent has been violating Section 8(a)(1). In its answer, the Respondent admits that it maintained the dues rule, but denies the allegation that it violated the Act.

We find that there are no issues warranting a hearing because the Respondent has admitted the crucial factual allegation that it maintained the dues rule in its policy manual. The Respondent claims, however, that the maintenance of the dues rule is not unlawful because it has not been enforced, and also because the dues rule is the product of an agreement with the National Production Workers Union, Local 707 (Local 707 NPWU or the Union), the authorized bargaining representative of the Respondent's employees. In addition, the Respondent argues that the General Counsel's Motion for Summary Judgment must be denied because the allegations in the complaint are not derived from the charge, and because the Regional Director's dismissal of an 8(a)(2) allegation in the charge requires "an independent showing of evidence" in support of the 8(a)(1) allegation in the complaint. For the reasons that follow, we find no merit in these defenses.¹

First, the Respondent contends that the maintenance of the dues rule is not unlawful because it has not been enforced. We do not agree. The Board's standard for analyzing whether the maintenance of a workplace rule violates Section 8(a)(1) is whether the rule reasonably tends to chill employees in the exercise of their Section 7 rights.² If the dues rule has this reasonable tendency, its maintenance is an unfair labor practice, even absent evidence of enforcement.³ And if the dues rule *explicitly* restricts activity protected by Section 7, a violation of Section 8(a)(1) is established without further analysis.⁴

The Respondent maintains a written rule in its policy manual that requires employees to sign a Local 707 NPWU dues-checkoff form in order to begin employment. The Board has consistently held that the execution of a dues-checkoff authorization by employees is voluntary and that employees cannot be required to authorize

¹ The Respondent also contends, in its brief in opposition, that the Motion for Summary Judgment should be denied because the General Counsel failed to file an affidavit of service on the parties. In its memorandum attached to its brief in opposition, however, the Respondent does not renew this contention; and more importantly, it does not contend that it was not served. Moreover, the Respondent fully responded to the General Counsel's motion, as well as to his memorandum in support of the motion. Indeed, the Respondent quotes verbatim from the General Counsel's supporting memorandum. Accordingly, we find that the Respondent was on notice of the General Counsel's motion and arguments in support thereof, and that it was not prejudiced by any technical shortcoming in the General Counsel's filing. Thus, the General Counsel's failure to file an affidavit of service does not warrant denial of his motion.

² *Lutheran Heritage Village—Livonia*, 343 NLRB 646, 646 (2004); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd. mem.* 203 F.3d 52 (D.C. Cir. 1999).

³ *Lafayette Park Hotel*, *supra*.

⁴ *Lutheran Heritage Village—Livonia*, *supra*.

dues checkoff as a condition of employment.⁵ Specifically, the Board has long held that employees have a Section 7 right to refuse to sign a checkoff authorization.⁶ The dues rule explicitly restricts that Section 7 right by requiring employees to authorize dues checkoff as a condition of employment. Under applicable precedent, the analysis ends there.⁷ Therefore, we reject the Respondent's defense based on an asserted lack of enforcement.

Second, the Respondent asserts that the maintenance of the dues rule is lawful because the rule was created by agreement with Local 707 NPWU. This defense is without merit. Enforcement of such a rule by an employer would constitute unlawful assistance to a union in violation of Section 8(a)(2);⁸ enforcement by a union would violate Section 8(b)(1)(A).⁹ The asserted fact that the Union agreed to a rule that cannot lawfully be enforced by either party to that agreement cannot possibly render the dues rule lawful.

Next, the Respondent argues that the complaint allegation of unlawful maintenance does not derive from the unfair labor practice charge. The charge alleges that the Respondent violated Section 8(a)(1) and (2) by "assist[ing] [the Union] by requiring employees to sign applications for union membership and dues checkoff authorizations prior to their 30th day of employment." The Regional Director dismissed the 8(a)(2) charge but issued the complaint alleging that the Respondent violated Section 8(a)(1) by maintaining the rule in its policy manual.¹⁰

We acknowledge that the allegation in the complaint is not identical to the allegation in the charge. They are, however, closely related; and it has long been settled that the General Counsel, in framing the complaint, is not limited to the precise allegations of the charge:

A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. . . . The responsibility

⁵ *Yellow Freight Systems of Indiana*, 327 NLRB 996, 997 (1999); *Electrical Workers IUE Local 601 (Westinghouse Electric Corp.)*, 180 NLRB 1062 (1970); see also *Mode O'Day Co.*, 280 NLRB 253 (1986), supplemented 290 NLRB 1234 (1988); *IBEC Housing Corp.*, 245 NLRB 1282, 1283 (1979).

⁶ *Electrical Workers IUE Local 601 (Westinghouse Electric Corp.)*, supra; *IBEC Housing*, supra.

⁷ *Lutheran Heritage Village—Livonia*, supra.

⁸ See, e.g., *Mode O'Day*, 280 NLRB at 254–255.

⁹ See, e.g., *Electrical Workers IUE Local 601 (Westinghouse Electric Corp.)*, supra at 1062.

¹⁰ The Regional Director issued a partial dismissal of the charge, stating:

Your charge alleges, in part, that the Employer violated Section 8(a)(2) of the Act by requiring employees to sign union membership applications and dues check-off authorizations prior to the 30th day of employment. The evidence failed to show that the Employer threatened employees with discharge or that it refused to employ them unless they signed membership applications and dues check-off authorizations. Rather, it appears that the Employer simply made forms available to employees.

ity of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act.¹¹

Finally, the Respondent contends that, in light of the Regional Director's dismissal of a portion of the unfair labor practice charge, the General Counsel must make "an independent showing of evidence to support" the complaint. The Respondent does not explain what further "independent showing of evidence" it thinks necessary. Contrary to the Respondent's suggestion in this regard, its admission that it has maintained the dues rule at issue here suffices, under the principles and precedent set forth above, to establish the 8(a)(1) violation alleged in the complaint.

Having found no merit in the Respondent's defenses, we find that the Respondent violated Section 8(a)(1) of the Act by maintaining the dues rule in its policy manual. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Maysville, Kentucky, and a branch located in Florence, Kentucky, has been engaged in the installation and service of DIRECTV satellite systems. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Maysville, Kentucky facility goods valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

Since about April 27, 2005, and at all times thereafter, the Respondent, by its policy manual issued to employees, has maintained the following rule:

In order to begin your employment all records listed below must be completed, inspected and on file at the corporate office:

. . . .

24. Local 707 NPWU dues form.

¹¹ *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959) (citation omitted).

CONCLUSION OF LAW

By engaging in the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, we shall order it to cease and desist, to rescind the rule and remove it from its policy manual, and to advise employees in writing that the rule is no longer being maintained.

ORDER

The National Labor Relations Board orders that the Respondent, JBM, Inc. d/b/a Bluegrass Satellite, Inc., Maysville and Florence, Kentucky, its officers, agents, successors, assigns, shall

- 1. Cease and desist from
 - (a) Maintaining the following rule in its policy manual:

In order to begin your employment all records listed below must be completed, inspected and on file at the corporate office:

. . . .

- 24. Local 707 NPWU dues form.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

- 2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Rescind the rule quoted above, remove the rule from its policy manual, and notify employees in writing that the rule is no longer being maintained.

- (b) Within 14 days after service by the Region, post at its facilities in Maysville and Florence, Kentucky, copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 27, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 27, 2007

Wilma B. Liebman,	Member
Peter C. Schaumber,	Member
Peter N. Kirsanow,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT maintain the following rule in our policy manual:

In order to begin your employment all records listed below must be completed, inspected and on file at the corporate office:

. . . .

- 24. Local 707 NPWU dues form.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL rescind the rule set forth above, remove the rule from our policy manual, and notify you in writing that the rule is no longer being maintained.

JBM, INC. D/B/A BLUEGRASS SATELLITE, INC.