

**Albert Van Luit & Company and Southern California  
Printing Specialties and Paper Products Union,  
District Council #2, AFL-CIO. Case 31-CA-  
6209**

February 28, 1978

**SUPPLEMENTAL DECISION AND  
ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO

On May 19, 1977, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended, and ordering Respondent to cease and desist therefrom and to take certain affirmative action to remedy such unfair labor practices. Because a close legal and policy question is raised, the Board, on its own motion, has decided to reconsider its original Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board has decided to adhere to the previous Decision, as herein amplified.

Following an affirmative deauthorization vote, Respondent's plant manager, Robert Adams, gave each unit employee a blank checkoff revocation form as paychecks were distributed. The revocation form stated it was effective as of May 28, 1976, which was the date of the deauthorization election and 3 months before certification of the results. Within 2 days, approximately 106 of 144 unit employees signed and returned the revocation form. Respondent honored them and immediately ceased deducting dues from those employees.

The Administrative Law Judge found, and we agree, that Respondent violated Section 8(a)(1) when it intruded into the relationship between unit employees and their bargaining representative by soliciting invalid revocations, that Section 8(a)(5) and (1) was violated by Respondent's unilateral repudiation of the checkoff provisions of the current collective-bargaining agreement, and that Section 8(a)(3) and (1) was violated when *invalid* revocations were honored.

<sup>1</sup> 229 NLRB 811.

<sup>2</sup> See *Bedford Can Manufacturing Corp.*, 162 NLRB 1428, 1432 at fn. 2 (1967); *Penn Cork & Closures, Inc.*, 156 NLRB 411, 414 (1965); *Monsanto*

The Administrative Law Judge cited ample precedent for the general rule that the certification of results of an affirmative deauthorization vote is the date when employees may effectively revoke check-off authorizations given or renewed while a union-security clause was in effect.<sup>2</sup> Further, he concluded that *Lyons Apparel, Inc.*, 218 NLRB 1172 (1975), is an exception to that rule.

We agree with the characterization of *Lyons Apparel* as an exception because of special, equitable considerations present in that case. In *Lyons* the Board held that a union could not enforce its union-security clause requiring a new employee to join and pay initiation fees and dues between the dates of an affirmative deauthorization vote and certification of the results of the election. The Board's conclusion was based on its view that it would be unconscionable to permit the union to exact initiation fees, the price of membership, and dues during a period when *prima facie* the employees had withdrawn the union's right to negotiate that as a condition of employment. To find otherwise would permit a union, by filing objections to the affirmative deauthorization vote, to unjustly enrich itself at the expense of employees.

There is a substantial difference between compelling new employees to join the union in the circumstances of *Lyons Apparel* and the enforcement of existing dues-checkoff authorizations which may or may not have resulted from a union-security clause. In the first instance the employees must join the union and pay a required initiation fee albeit their fellow employees have voted against that condition of employment. Moreover, even if the results are not certified and a contrary result is certified after a second election, the union does not lose much by delaying enforcement of the union-security obligation. The equities are thus clearly in favor of new employees and against enforcement of the collective-bargaining contract. In the latter instance, however, continued deduction of dues pursuant to the employees' own authorizations forces nothing on employees. Rather, pending certification, employees are required only to maintain a dues-paying status that resulted not only from the collective-bargaining contract negotiated by their representative, but also from their own specific authorizations.

Prior to rescinding a union's authority to negotiate a union-security clause, Section 9(e)(1) of the Act mandates both a secret-ballot election for the employees and certification of the results for the labor organization. Implicit is the right of either party to have its objections heard before the finality of certification. Further, absent the equitable consider-

*Chemical Company*, 147 NLRB 49, 51 (1964); and *Andor Company, Inc.*, 119 NLRB 925, 929 (1957).

ations present in *Lyons*, enforcement of the union-security provision under the general rule that it is effective until certification of an affirmative deauthorization vote lends more certainty and stability to the collective-bargaining process than would ensue from a contrary rule.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below,<sup>3</sup> and hereby orders that the Respondent, Albert Van Luit & Company, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the said

<sup>3</sup> The modification is pursuant to an unopposed request by the General Counsel.

recommended Order, with the following modification:

Substitute the following for paragraph 2(c):

“(c) Post at its place of business at 4000 Chevy Chase Drive, Los Angeles, California, copies of the attached “Appendix” in both English and Spanish. Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent’s representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.”