

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

May 19, 1977

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND WALTHER

On December 29, 1976, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

### 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 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 said recommended Order.

### DECISION

#### STATEMENT OF THE CASE

**RICHARD J. BOYCE, Administrative Law Judge:** This case was heard before me in Los Angeles, California, on November 9, 1976. The charge was filed June 15, 1976, by Southern California Printing Specialties and Paper Products Union, District Council #2, AFL-CIO (hereinafter called Union). The complaint issued July 26, alleging violations by Albert Van Luit & Company (hereinafter called Respondent) of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended.

The parties were permitted at the hearing to introduce relevant evidence, examine and cross-examine witnesses, and argue orally. Posthearing briefs were filed by the General Counsel, Respondent, and Union.

#### I. ISSUES

The issues are whether Respondent:

1. Solicited revocations of dues-checkoff authorizations from its employees in a manner violating Section 8(a)(1).
2. Discriminatorily refused to withhold checkoff monies from the wages of some employees, but not others, violating Section 8(a)(3) and (1).
3. Unilaterally repudiated the checkoff provisions of its bargaining agreement with the Union, violating Section 8(a)(5) and (1).

#### II. JURISDICTION

Respondent is a California corporation, with a plant in Los Angeles, engaged in the manufacture of wall coverings. Its annual gross income exceeds \$500,000, and it annually ships products valued in excess of \$50,000 directly to customers outside California.

Respondent is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

#### III. LABOR ORGANIZATION

The Union is a labor organization within Section 2(5) of the Act.

#### IV. THE ALLEGED UNFAIR LABOR PRACTICES

**Facts:** On January 23, 1975, the Union was certified to represent Respondent's employees in this unit:

All production and maintenance employees, shipping and receiving employees, warehousemen, and truckdrivers employed at the facility located at 4000 Chevy Chase Drive, Los Angeles, California; excluding all office clerical employees, designers, professional employees, guards, and supervisors as defined in the Act.<sup>1</sup>

On June 29, 1975, Respondent and the Union entered into a bargaining agreement, effective until June 28, 1977, covering the employees in the above unit. The agreement includes a standard 30-day union-security clause, plus a dues-checkoff provision. The checkoff provision specifies that checkoff authorizations submitted by employees are to be irrevocable "for the period of one (1) year from the date of delivery thereof to the Employer or until termination of the collective bargaining agreement . . . whichever occurs sooner"; and are to renew automatically thereafter "unless written notice is given by the employee to the Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year or of each applicable collective bargaining agreement . . . whichever occurs sooner." The agreement further states:

The Employer, upon receipt of signed authorization from the employee, will deduct the stipulated amount from the employee's wages, and remit same to the Specialty Workers Credit Union/Paper Specialties Federal Credit Union.

<sup>1</sup> It is concluded that this is an appropriate unit within Sec. 9(b) of the Act. The certification issued in Case 31-RC-3017.

On April 16, 1976, a petition was filed asking that the NLRB conduct a union-security deauthorization election among the employees in question.<sup>2</sup> An election followed on May 28, with 76 voting for deauthorization and 58 against. The Union filed objections to the conduct of the election on June 2. They were overruled and the election results certified by the Regional Director on August 31. The Union's appeal to the Board was denied by order dated October 5.

On June 10 and 11, 1976, i.e., while the Union's objections to the election were pending, Respondent's plant manager, Robert Adams, followed along as paychecks were distributed, giving each employee a blank checkoff revocation form and an explanatory document. The revocation form stated:

Revocation of Authorization for Payroll  
Deductions

Effective as of May 28, 1976, I hereby revoke all prior authorization given by me to Albert Van Luit & Company to withhold from my pay for dues, fees or other payments to the Printing Specialties & Paper Products Union, District Council No. 2.

Date:

(Signature of Employee)

(Print name of Employee)

The explanatory document stated:

To All Bargaining Unit Employees:

Many of you have asked what effect the Union Deauthorization vote on May 28, 1976, will have on the withholding of Union dues and fees from your paychecks. As you know, you voted 76 to 58 to revoke the Union's authority to require that membership in the Union be required of all employees.

Our attorneys have advised us that we should withhold dues and fees for the Month of May, 1976 from your June 11, 1976, checks. We will hold these fees and dues until it can be determined whether we must pay them to the Union or whether we can refund them to you.

The Union has delayed certification of the results of the Union Deauthorization election by filing Objections to the Conduct of the Election. Once the election is certified, we will be in a better position to determine whether the dues and fees for May must be paid to the Union or whether we can refund them to you.

In the meantime, our attorneys have advised us that we should also withhold dues and fees for the month of June, unless individual employees express their desire to revoke the check-off "authorization" earlier signed by them.

Accordingly, if you desire that the Company stop withholding Union dues and fees from your paychecks, you may sign and date the attached Revocation and

give it to your Supervisor or to the payroll department. You should then contact the Union to determine what else should be done if you want to resign from the Union or otherwise terminate your individual obligation to pay dues and fees.

If you want the Company to continue to withhold dues and fees, do nothing.

If you want to have the Company stop withholding dues and fees, sign the attached Revocation and give it to the Company, or otherwise clearly express your intention to do so to the Company, preferably in writing.

While distributing the materials, Adams told each employee to sign and return the revocation form if he/she no longer wished to participate in checkoff, and otherwise to do nothing. It is most unusual, if not unprecedented, for Adams himself to communicate with and make distributions to the employees in this manner.

Approximately 106 employees signed, dated, and returned the revocation forms, including about 33 on June 10 and about 54 on June 11. The record does not disclose the delivery dates of the authorizations thus revoked.

Respondent's practice had been to withhold checkoff moneys on the first payday of each month, to cover the preceding month's dues, promptly remitting to the Union as prescribed by the agreement. It withheld in the usual fashion on the June 10-11 payday, covering May dues, delaying until July to give effect to the revocations submitted on and after June 10. Rather than promptly remit the June 10-11 withholdings, however, Respondent waited until October 1. Remittance of withholdings from the pay of employees who left their authorizations intact, covering June, July, August, and September dues, likewise was delayed, finally being made during the hearing.

Respondent's thinking in delaying tender is suggested by this extract from a letter of its attorney accompanying the October 1 remittance:

Enclosed please find check . . . . This check represents the Union dues and initiation fees withheld from bargaining unit employees out of their paychecks dated June 11, 1976. We are forwarding this sum to you upon your representation that the dues and initiation fees withheld from said paychecks were for the calendar month of May, 1976. . . .

The company has continued to deduct dues and fees from bargaining unit employees after June 11, 1976, only for such employees who have not revoked the checkoff authorizations earlier given to the company. The funds so withheld have been placed into a separate bank account.

Because the union has taken the position that the bargaining unit employees may not revoke the checkoff authorizations until the results of the union deauthorization election were certified, some of the bargaining unit employees entitled to do so may not have revoked such authorizations. Accordingly, the company believes that it should await final determination of the election

<sup>2</sup> Case 31-UD-89.

certification issues so that the bargaining unit employees may have the opportunity to decide whether or not they individually would like to terminate the checkoff authorizations, retroactive to the date of the election, unfettered by the union's assertion that they cannot do so.

As you know from our earlier correspondence, the company believes that . . . checkoff authorizations are subject to revocation by the employees even prior to the certification of the results of the union deauthorization election. Further, failure of the company to honor such revocations would violate the Act. . . .

*Discussion:* The Board stated in *Penn Cork & Closures, Inc.*, 156 NLRB 411, 414 (1965):

[W]hen there was been an affirmative deauthorization vote, outstanding checkoff authorizations originally executed while a union-security provision is in effect become vulnerable to revocation regardless of their terms.

The date the union-security provision becomes inoperative, for this purpose, is not the literal date of the election, but rather that on which the certification of results issues. *Bedford Can Manufacturing Corp.*, 162 NLRB 1428, 1432, fn. 2 (1967); *Penn Cork & Closures, Inc.*, *supra* at 414; *Monsanto Chemical Company*, 147 NLRB 49, 51 (1964); *Andor Company, Inc.*, 119 NLRB 925, 929 (1957).<sup>3</sup>

There is neither contention nor evidence that any of the precertification revocations in the present case fell during an "escape period" established by the bargaining agreement. It is concluded, therefore, that those submitted on and after June 10, and before the certification of results issued on August 31, were against the agreement and thus of no legal effect; and that Respondent's repudiation of the checkoff provisions of the agreement, by honoring those revocations and by failing to make prompt remittance of the checkoff moneys it did collect, constituted unilateral changes violating Section 8(a)(5) and (1). *Shen-Mar Food Products, Inc.*, 221 NLRB 1329 (1976); *W. P. Ihrle & Sons*, 165 NLRB 167 (1967).

It is further concluded that, by soliciting invalid revocations, Respondent intruded into the relationship between the unit employees and their bargaining representative in a manner independently violative of Section 8(a)(1). *Shen-Mar Products, Inc.*, *supra*; *Hexton Furniture Company*, 111 NLRB 342 (1955). Such cases as *Cyclops Corporation, Tex-Tube Division*, 216 NLRB 857 (1975), and *Perkins Machine Company*, 141 NLRB 697 (1963), holding that the employer did not violate the Act by apprising employees of their revocation rights *under the contract*, are inapposite.

It is concluded, finally, that Respondent discriminated against its employees in a way that discouraged union activity, thereby violating Section 8(a)(3) and (1), by

withholding checkoff moneys from some employees but not from others (those who had submitted the void revocations) based on a legally invalid classification. Cf. *Atlanta Printing Specialties and Paper Products Union 527, AFL-CIO (The Mead Corporation)*, 215 NLRB 237 (1974), *enfd.* 523 F.2d 783 (C.A. 5, 1975).

#### CONCLUSIONS OF LAW

1. By soliciting invalid checkoff revocations from its employees, as found herein, Respondent violated Section 8(a)(1) of the Act.

2. By not withholding checkoff moneys from employees who had submitted invalid checkoff authorizations, while withholding from those who had not, as found herein, Respondent violated Section 8(a)(3) and (1) of the Act.

3. By unilaterally repudiating the checkoff provisions of its bargaining agreement with the Union, as found herein, Respondent violated Section 8(a)(5) and (1) of the Act.

4. These unfair labor practices affect commerce within Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER <sup>4</sup>

The Respondent, Albert Van Luit & Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to check off union dues pursuant to valid checkoff authorizations and to remit same to the Union pursuant to the collective-bargaining agreement in effect between the parties.

(b) Soliciting checkoff revocations from its employees at times when revocations are not permitted either by contract or operation of law.

(c) Applying the checkoff provision of the agreement in an unlawfully discriminatory manner.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights protected by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Honor the contract checkoff provisions and the valid dues-checkoff authorizations filed with it, and remit to the Union dues it should have checked off pursuant to the collective-bargaining agreement between the parties, together with interest at 6 percent per annum.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the amount due under the terms of this Order.

All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>3</sup> A narrow exception is expressed in *Lyons Apparel, Inc.*, 218 NLRB 1172, 1173 (1975): "We hold that a union may not require a new employee to join and pay initiation fees and dues during the period between the affirmative deauthorization vote and the certification of the results of the election."

<sup>4</sup> To any extent that this Order might be deemed in conflict with state law, that law is preempted. *Shen-Mar Products, Inc.*, 221 NLRB 1329 (1976).

(c) Post at its place of business at 4000 Chevy Chase Drive, Los Angeles, California, copies of the attached notice marked "Appendix."<sup>5</sup> 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 ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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<sup>5</sup> In the event the Board's Order is enforced by a Judgment of the 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."

## APPENDIX

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

WE WILL NOT fail or refuse to check off union dues pursuant to valid checkoff authorizations and to remit same to the Union pursuant to our collective-bargaining agreement.

WE WILL NOT solicit checkoff revocations from our employees at times when revocations are not permitted either by contract or operation of law.

WE WILL NOT apply the checkoff provision of our agreement with the Union in an unlawfully discriminatory manner.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights protected by Section 7 of the Act.

WE WILL honor the contract checkoff provisions and the valid dues checkoff authorizations filed with us, and remit to the Union dues we should have checked off pursuant to our collective-bargaining agreement, together with interest at 6 percent per annum.

ALBERT VAN LUIT &  
COMPANY