Morton Salt Company *and* Manistee County Independent Union, Inc., formerly known as Fallen Forge Workers' Union, Inc. (Ind.) *and* District 50, United Mine Workers of America,[1] and Its Local Union No. 12277, Parties to the Contract. *Case No. 7-CA-1433. January 27, 1958*

DECISION AND ORDER

On March 21, 1957, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in any unfair labor practices and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief and the Respondent filed a brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, to the extent consistent herewith:[2]

The Respondent is charged in the complaint with violating Section 8 (a) (1) and (2) of the Act in that it failed to honor certain revocations of checkoff authorizations and, thus, without authority continued to check off the union dues of two employees and continued to pay such dues to the UMW, the contracting union.

The UMW and Respondent had a checkoff provision in their 1952 contract and checkoff authorizations were executed by the two employees involved pursuant to the contract. These authorizations provided for revocation of the checkoff by written notice to be delivered to the Respondent and UMW within a specified time. It is not contended that either the contract provision or authorizations were defective, but it is the position of the General Counsel that the Respondent failed to honor checkoff revocations which were timely delivered with-

[1] Hereinafter called UMW.

[2] In view of our disposition of this case, we find it unnecessary to pass on the correctness of the Trial Examiner's findings as to the binding effect upon the Respondent of the revocation action taken and as to the scope of the "escape period."

in the meaning of the language of the authorizations. Respondent contends, however, that the revocations were untimely under the terms of the authorizations and thus were not effective. Consequently, this proceeding involves essentially a dispute concerning the meaning and administration of the checkoff provisions of UMW's contract, as implemented by the employees' authorizations. The Board has long held, however, that it will not effectuate the policies of the Act for it to police collective-bargaining agreements by attempting to resolve disputes over their meaning or administration, particularly where it is evident, as in the case at bar, that the Respondent acted reasonably and in good faith.[3]

Accordingly, we shall adopt the Trial Examiner's recommendation and dismiss the complaint.

[The Board dismissed the complaint.]

[3] *United Telephone Company of the West and United Utilities, Incorporated,* 112 NLRB 779, 781–782; *Consolidated Aircraft Corp.,* 47 NLRB 694, enfd. 141 F. 2d 564 (C. A. 9).

INTERMEDIATE REPORT

STATEMENT OF THE CASE

A charge having been duly filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent Company, a hearing involving allegations of unfair labor practices in violation of Section 8 (a) (1) and (2) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was held in Manistee, Michigan, on February 19, 1957, before the duly designated Trial Examiner.

As to the unfair labor practices, the complaint alleges and the answer denies that the Respondent: (1) in January 1956 illegally failed to honor revocations submitted by 2 employees, Joseph Helminski and Hayden Anderson, of their previously executed checkoff authorizations; (2) since March 1956 has continued to deduct periodic dues from the wages of the said 2 employees and has paid them over to the local of the UMW, thereby illegally contributing financial assistance to the said local; and (3) by such conduct has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. Each of the above-named counsel argued, their arguments appearing in the official transcript. The filing of briefs was waived by all parties.[1]

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

[1] After the close of the hearing, counsel for the Respondent submitted to all parties and the Trial Examiner a memorandum citing a certain case referred to in his oral argument. Also after the close of the hearing the same counsel submitted to all parties and the Trial Examiner a letter calling attention to two obvious typographical errors in the official transcript. No objection having been received from other parties, the Trial Examiner hereby orders that the transcript be corrected in the following respects: (1) on page 122, fifth line, the word "partiality" should read "impartiality"; (2) on page 130, sixth line, the word "received" should read "ceased."

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Morton Salt Company is an Illinois corporation, with principal offices in Chicago, Illinois. It owns and operates plants in eight States of the United States. Its plant at Manistee, Michigan, is an integral part of its interstate operations, and annually ships finished products valued at more than $200,000 directly to points outside the State of Michigan. During the year 1955, in the course and conduct of its multistate business operations, it received as gross revenue more than $10,000,000.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District 50, United Mine Workers of America, and its Local Union No. 12277, are labor organizations within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Relevant facts*

Since 1940 the Respondent Company has recognized and contracted with the UMW as the bargaining agent for a unit of employees—a unit which in 1956 numbered nearly 300. Pursuant to contract, the Employer began in 1954 to deduct union dues, for transmission to the UMW local, from the wages of all employees in the unit who signed checkoff slips authorizing such deductions.

General Counsel challenges the legal validity of neither the contracts nor the checkoff provisions and procedures.

The relevant portion of the checkoff authorization blank is quoted:

> My employer . . . is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than ____ days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Early in 1954 the Employer received more than 250 such authorization slips, signed by its employees. Early in 1955 an undisclosed number of such employees submitted written notice to the Employer of their desire to revoke their authorizations. It appears that some notifications were honored, and others were not. Employees whose notifications of revocation were not honored received from the plant manager, then C. H. Martin, the following communication:

> Your wage assignment for union dues was effective April 1, 1954, and is revokable (sic) by written notice to the company and the union only if delivered between January 20, 1955, and January 30, 1955. We do not consider your revocation effective because it was not delivered within this period.

The Employer took the above-described action—of rejecting some revocations and honoring others—after consulting its attorneys as to the proper period within which, pursuant to the language of the authorization slips, such revocations could be accepted.

There is no evidence that any charges in 1955 were filed with the Board on behalf of employees whose revocations that year were not honored.

On January 31, 1956, the Employer received from the UMW revocation notices from four employees. The employees' names and respective date of signing such revocations are as follows:

Hayden Anderson	Jan. 19, 1956
Joseph Helminski	Jan. 16, 1956
John Majchrzak	Jan. 23, 1956
John Grabowski	Jan. 26, 1956

Upon receipt of these revocations, the new manager, F. G. Colladay, sought advice from counsel as to their acceptance or rejection. Acting upon advice received, management thereafter accepted the revocations of Majchrzak and Grabowski and notified Anderson and Helminski as follows, in part:

> Since the effective date of said revocation, as provided therein, was of a date more than seventy (70) days before the periodic renewal date of said assignment, it is the position of the Company that said notice was not timely and that, therefore, said assignment remains in full force and effect.

The Employer thereafter continued to deduct union dues from the wages of these two employees, and turned such dues over to the UMW. On their behalf an independent labor organization filed charges with the Board in April 1956, claiming that by refusing to honor the revocations the Employer had violated the Act. And based upon these charges, the complaint was thereafter issued by General Counsel.

As to the factor of 70 days, emphasized in the Employer's letters to Anderson and Helminski, the following relevant facts were established at the hearing, either by way of stipulations or by concessions.

When received by the Employer in 1954, all but 11 of the more than 250 signed checkoff authorizations contained the figure "70" written in the blank space noted in the authorization text quoted above. No figure other than "70" appeared in this space on any such authorization. Counsel for the Union conceded that the employee signing the authorization did not, in all cases, fill in this blank space, but that "in many instances" the space would be filled in by the person soliciting signatures to the authorization blanks.

As to Anderson and Helminski, their testimony regarding their authorizations and revocations in substance is as follows. Although each of their checkoff authorizations (dated respectively March 19 and March 17, 1954), contained the figure "70" at the time of its receipt by the Employer, both said that the figure was not on the blank when they signed and that they were not thereafter notified of its insertion. Both employees admitted that they did not ask any company representative in 1956 as to the proper period within which to file revocation. Anderson said he dated his revocation on January 19, 1956, because he was told by a union steward that it should be in "before the 20th." Helminski dated his revocation January 16, 1956—apparently upon his own calculation—after obtaining through his foreman the date of his checkoff authorization.

B. *Conclusions*

In oral argument General Counsel claimed that: (1) Because the figure "70" was not written upon the authorization slips at the time they were signed by Anderson and Helminski, "any notice of revocation given at least sixty days prior to the proper renewal period would be a valid tender of that revocation"; (2) although checkoff authorizations of Helminski and Anderson were dated in mid-March 1954, they were really applicable to the succeeding 1954–56 contract and not to the existing 1952–54 contract; (3) since the authorizations were "terminable at the end of one year or the term of the contract, whichever was the lesser," and because the period of 1 year from the date of the authorizations was less than the 2-year period of the 1954–56 contract, the appropriate "escape" period—even accepting the 60–70 days limitation—for Helminski was from January 7 to 17, 1956, and for Anderson from January 9 to 19, 1956; (4) since the former's revocation was dated January 16, 1956, and the latter's was dated January 19, 1956, both were timely tendered and should have been honored by the Employer; (5) if his own previously stated theories are invalid, and even adopting the Employer's position that the appropriate escape period was between January 22 and 31, 1956, the Employer should have honored the revocations upon their receipt, on January 31, since the Union "as agent for the company" retained possession of them from the date of their signing until January 31 without notifying the 2 employees that they had been submitted prematurely and for the further reason that the 2 revocations, while in the possession of the Union, each day constituted "in effect a new legal tender"; and (6) the subsequent deduction of dues and their transfer to the Union constituted violation of the Act.

Counsel for the Respondent, on the other hand, contends that: (1) The 2 authorizations in question properly became effective immediately upon their submission in mid-March 1954, and were properly applicable to the contract then in existence—particularly so because in mid-March of 1954 there was no assurance that a new contract would be written, and that such authorizations were automatically renewed

on April 1, 1955, for 1 year because they had not been revoked as of March 31, 1955; (2) therefore the appropriate "escape period" in 1956 was the 10-day period from 60 to 70 days before March 31, 1956—or between January 22 and 31, 1956; and (3) since the revocations of Anderson and Helminski were dated before January 22, they were untimely and properly not honored.

In the first place, the Trial Examiner finds no merit in General Counsel's contention to the effect that the Respondent must be held accountable for the Union's failure to submit the revocations of Anderson and Helminski until January 31. Had either or both of the employees submitted their prematurely dated revocations direct to the Employer, as required by the language of the authorizations themselves, and had the Employer then failed to notify them within a reasonable time so they might have rectified their mistake, some suspicion might well be attached to the Employer's good faith. Helminski admitted that he gave *both* copies of his revocation to a union official, and Anderson's claim that he gave one copy to his foreman, Fortier, is not credited. Not only did Fortier deny having received any revocations, but from the Union's files its counsel produced at the hearing the second of the two revocations Anderson said he executed—the first having been submitted to the Employer on January 31, 1956. General Counsel conceded that he was shown this second revocation and that it bore Anderson's writing.

In the second place, the Trial Examiner is of the opinion that it was the general understanding of all parties, including employees signing them, that the checkoff authorizations provided for a 10-day "escape" period, whether or not in all of the 250 or more cases the figure "70" appeared on the blanks at the time they were signed. Employee Majchrzak, a witness for General Counsel, testified that it was common knowledge in his "part of the plant" as to the proper date to revoke such authorizations. And as noted above, in 1955 the Employer sent written notification to a number of employees of the proper "escape" period.

The major questions are thus reduced to the issue of determining whether or not the 10-day period should be figured from the anniversary date of specific authorizations or from the date of the expiration of the 1954–56 contract. The various positions taken by General Counsel in his argument support a conclusion that the language of the checkoff authorizations may well be susceptible of differing interpretations—that the revocation terms are somewhat ambiguous.

Ambiguity, however, does not establish illegality. The record contains neither evidence nor allegation of any unfair labor practice except the Employer's performance of what it believed it was supposed to do under terms of the authorizations. There is no evidence that it was motivated, in rejecting certain revocations and honoring others, by any intent to deprive employees of certain legal rights or to render the UMW any financial assistance.

Under the circumstances, then, and without deciding which of various interpretations of the "escape" clause is, in his opinion, the most valid, the Trial Examiner concludes and finds that the preponderance of evidence does not support General Counsel's allegation that the Respondent, pursuant to its interpretation of an ambiguous escape clause and its subsequent specific conduct in respect to Anderson and Helminski, has violated Section 8 (a) (1) and (2) of the Act.[2]

Upon the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. The operations of the Respondent occur in commerce within the meaning of the Act.
2. District 50, United Mine Workers of America, and its Local Union No. 12277, are labor organizations within the meaning of Section 2 (5) of the Act.
3. The Respondent has not engaged in unfair labor practices, as alleged in the complaint, within the meaning of Section 8 (a) (1) and (2) of the Act.

[Recommendations omitted from publication.]

[2] "An interpretation which makes the contract or agreement lawful will be preferred over one which would make it unlawful." Williston on Contracts, revised edition, Section 620.