

International Association of Machinists & Aerospace Workers, Local Lodge No. 933, AFL-CIO (Hughes Aircraft Company, Tucson Division) and A. R. Greszler, Richard McHenry, and Harry E. Ouderkirk. Cases 28-CB-377, 28-CB-380, and 28-CB-381.

April 19, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND JENKINS

On September 27, 1966, Trial Examiner Marion C. Ladwig issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, exceptions to the Trial Examiner's Decision and a supporting brief were filed by the General Counsel.

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

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, only to the extent consistent herewith.

The consolidated complaints in this case allege that the Respondent, by refusing to recognize the revocation of checkoff authorizations submitted by the Charging Parties and by continuing to require Hughes Aircraft to deduct the dues of the Charging Parties, notwithstanding the attempted revocation, restrained and coerced these employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby violated Section 8(b)(1)(A) of the Act.

Shortly after employment, each of the three Charging Parties signed checkoff authorization forms, and, subsequent to signing such forms, each was temporarily laid off by the Employer, Hughes Aircraft Company. During the period of layoff, their memberships in the Union were canceled by the

Respondent. At the end of the layoff periods, each of the Charging Parties returned to active employment with the Employer. The Charging Parties attempted to revoke their checkoff authorizations in accordance with the terms of the collective-bargaining agreement and continued to advise the Respondent of their desire to revoke such authorizations. The Respondent, however, has refused to recognize the revocations as being timely made, and concedes that it has continued to require Hughes Aircraft to deduct their dues. As Arizona is a "right to work" State, the collective-bargaining contract does not require membership in the Union as a condition of employment.

Charging Party Harry E. Ouderkirk was first employed by the Employer in June 1961. He signed the dues-deduction checkoff in October 1961. He was laid off and recalled on two occasions: November 1, 1963—June 9, 1964; and July 3, 1964—November 30, 1965. During the periods of layoff, Ouderkirk neither paid dues nor purchased unemployment stamps which would have excused him from the payment of regular dues. Respondent International's constitution provides that, under such circumstances, membership is automatically canceled. The Respondent's business representative testified that Ouderkirk was "lapsed from membership" in January 1964 for failure to apply for unemployment stamps, and also that he never subsequently applied for reinstatement in the Union.¹

On November 14, 1962, Ouderkirk sent a letter, dated November 15, 1962, to his Employer and also one to the Respondent Union canceling his dues-checkoff authorization. The envelopes in which these letters were sent were postmarked November 14, 1962. The checkoff authorization which Ouderkirk signed provided that "This authorization and assignment shall be considered to have been re-executed and extended year to year hereafter for periods not to exceed one (1) year each if not cancelled: . . . (3) by written notice to the Employer, copy to the Union . . . dated U.S. Post Office cancellation between November 15 and 30, inclusive of the then currently effective yearly period . . ." Ouderkirk mailed his letters by *certified* mail a day ahead of the specified time. The Employer continued taking out his dues after the letter of revocation, and Ouderkirk subsequently complained to his union steward, who promised repeatedly to check on the matter but never subsequently advised Ouderkirk of any action taken. After Ouderkirk was recalled from layoff in November 1965, he found out in December of that year that his employer was still checking off his dues. He complained to the payroll department and was told that his 1962 notice of revocation was too early by 1 day, and that the letter was supposed to

¹ Sometime in December 1963 or January 1964, Ouderkirk received a notice from the Respondent that he was delinquent in

his dues payment and that his membership in Respondent would lapse if he did not pay the amount owing by March 31, 1964

have been sent by registered mail instead of certified mail. Ouderkirk later talked to the head of employee relations who also told him that the letter was a day too early.

In March 1966, Ouderkirk received a letter from the Union advising him that the Union's past practices of automatically reinstating to membership those who had allowed their membership to lapse, as Ouderkirk had, was contrary to its International's constitution,² and asked him to sign a new membership application and checkoff authorization. Ouderkirk did not apply for reinstatement, nor did he sign the new checkoff authorization.

Charging Party McHenry was first employed by Hughes Aircraft in June 1955. He shortly thereafter signed a checkoff authorization and later signed another on March 12, 1963. On October 15, 1965, he sent registered letters to both the Company and the Union, withdrawing from the Respondent Local.³ Approximately 2 weeks thereafter, he spoke to Mr. Thomason of the Employer's labor relations department who told him that his letter was not timely by a matter of days; but when asked what days would have been timely, Thomason gave no reply. McHenry then talked to his union steward and asked him to check on what days would have been timely. His steward subsequently told him that there were two timely periods when his revocation would be effective; 10 to 25 days prior to (a) the yearly anniversary date of the collective-bargaining agreement, or (b) the yearly anniversary date of his checkoff authorization date. McHenry then sent another registered letter on February 10, 1966, to both the Company and the Union, submitting his withdrawal from the Union and revoking his checkoff authorization. Before sending the second letter, McHenry again talked to Thomason and told him that the union steward had indicated that the 10-through 25-day period prior to the yearly anniversary of the date he signed the union checkoff authorization was timely for withdrawal and cancellation. Thomason said he would check on this, and the next day he told McHenry that it was his understanding that what the union steward had told McHenry was correct. After sending in the second letter, McHenry again inquired of the Union as to what happened in respect to the second revocation, and was told that it was also not timely.

During the period that McHenry was laid off

(January 1964 through October 1965), he did not pay any dues or purchase unemployment stamps and, accordingly, his membership in the Respondent Local was canceled. McHenry never applied for reinstatement after he returned to work in October 1965.

Charging Party Greszler signed a checkoff authorization on October 3, 1963.⁴ He subsequently was laid off for periods in January, February, March, and April, 1964, and from some date in May 1964 through October 1, 1965. During the last period of layoff, he failed to pay union dues and did not apply for membership unemployment stamps. Accordingly, his membership was automatically canceled. When he returned to work in 1965, he was asked to sign an application for reinstatement in the Union, but refused to do so. The Employer continued checking off his dues after he returned in October 1965, and he asked his shop steward, Bruce Miller, why dues were being deducted when he was no longer a member. Shop Steward Miller told him that his checkoff authorization, which he had signed in 1963, was still in force and that the only way to eliminate it was to write both the Union and the Company, notifying them of his desire to revoke the authorization, and that such letters had to be in by October 20, 1965. Greszler then sent the letters on October 14, 1965, to both the Union and the Company. The Company continued to check off his dues, and Greszler spoke to Thomason and asked him why the Company continued making the deductions. Thomason told him that his revocation letter of October 14 was a day late and was therefore not effective. Greszler advised Thomason that he was no longer a union member and that the steward told him to get his letter in by the 20th. Thomason agreed to void Greszler's checkoff authorization upon receipt of a note from the Union that Greszler's membership was canceled, or a note advising him that the union steward had given Greszler the wrong information. Greszler was unable to obtain such a note from the Union.

The Trial Examiner found that the union steward intentionally misled McHenry as to the proper dates that he could submit his checkoff revocation, that McHenry relied on the misleading advice received, and that, therefore, the Union violated Section 8(b)(1)(A) of the Act by refusing to recognize McHenry's October 15, 1965, checkoff revocation

² Section 16, article I, constitution of the International Association of Machinists & Aerospace Workers effective January 1, 1965

³ McHenry's checkoff authorization form authorized the Company to deduct from his wages "each month such sum as is equivalent to the Union's regular monthly membership dues" and further provided that "This authorization and assignment shall be irrevocable for a period of one (1) year from this date, or until the termination of the applicable Collective Bargaining Agreement between the Employer and the Union,

whichever occurs sooner. This authorization and assignment shall continue in full force and effect from year to year for one-year periods beyond the irrevocable period set forth above, and each subsequent one-year period shall be similarly irrevocable unless revoked by me giving written notice to the Employer and the Union, bearing my signature and payroll number, by certified mail dated by U S Post Office cancellation at least ten (10) days, but not more than twenty-five (25) days prior to the last day of my irrevocable period hereof "

⁴ He signed the same type of authorization as did McHenry

notice and requiring the Company to continue deducting union dues from his wages.⁵

With respect to the other two Charging Parties, the Trial Examiner found that they were neither tricked nor intentionally misled into submitting untimely revocation notices. He concluded that the parties to the collective-bargaining agreement had construed the agreement as requiring that each employee be bound by his voluntary checkoff authorization for its term, regardless of whether or not his union membership continued without interruption, that the annual revocation period has to be strictly applied as written, and that the revocation notices had to be in writing and timely, and that the Charging Parties should have resorted to the grievance procedure in the collective-bargaining agreement between the Respondent and Hughes Aircraft to seek redress for any wrongs committed by Respondent in requiring the Employer to continue checking off dues payments.

We do not agree. In our opinion, Respondent's insistence that Hughes Aircraft Corporation continue to check off the dues of the Charging Parties after Respondent had terminated their union membership, restrained and coerced the Charging Parties in their right to refrain from joining or assisting Respondent Union.

Quite obviously, Respondent's termination of the union membership of the Charging Parties during their long layoff from employment at Hughes Aircraft extinguished any obligation to pay monthly dues and other union fees flowing from the fact of membership itself. Such obligation was not, and could not be, revived by Respondent's attempted reinstatement of their membership standing without application on their part and over their expressed objection. Nor do the authorization cards signed by the Charging Parties serve as a defense to the allegations of the complaint. The circumstances of this case persuade us that the authorization cards involved were intended and understood by all parties concerned to authorize only the deduction of certain fees which the Charging Parties were obligated to pay to Respondent Union by virtue of their membership in the Union. Thus, the Charging Parties executed the authorization cards involved at a time when they were members of the Respondent, and Respondent introduced no evidence to show that checkoff provisions of the contract were intended to be used or were used by nonmembers wishing to make support money payments to the

Union; and the wording of the authorization cards is prescribed in the provisions of the collective-bargaining agreement entitled, "Deduction of Union Fees and Payment," and clearly relates to the payment of membership obligations. Moreover, we believe Respondent's action of attempting to reinstate the Charging Parties' union membership before demanding that Hughes Aircraft Company deduct membership dues from their paychecks is persuasive evidence that Respondent did not normally treat dues deduction authorizations of its members as a valid basis for collecting support money payments after membership had lapsed or otherwise been canceled or terminated on its initiative. In the light of the foregoing considerations, we are satisfied that, after Respondent terminated the Charging Parties' union membership, the Charging Parties were no longer obligated to send the Union and Hughes Aircraft Company notice of their intention to terminate their authorizations in order to prevent such authorizations from automatically renewing. We therefore find that such authorizations were no longer in effect when the Respondent invoked the provisions of the collective-bargaining agreement to require Hughes Aircraft Company to deduct membership dues from the Charging Parties' paychecks after their return to work. Accordingly, we find that Respondent violated Section 8(b)(1)(A) of the Act by insisting that Hughes Aircraft deduct sums equal to Respondent's monthly membership dues from the Charging Parties' wages and by accepting payment of such sums.⁶

CONCLUSIONS OF LAW

By terminating the union membership of A. R. Greszler, Richard McHenry, and Harry E. Ouderkirk, and thereafter requiring the Hughes Aircraft Company, Tucson Division, to continue deducting sums equal to the monthly union membership dues from these employees' wages, by accepting payment of such sums, and by misleading A. R. Greszler concerning when to revoke his checkoff authorization, causing him to submit untimely revocation notices, the Union has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(b)(1)(A) and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in

⁵ We adopt this finding, but with reference to allegations of the complaint relating to Respondent's refusal to recognize Greszler's rather than McHenry's revocation notice. We do so because the Trial Examiner inadvertently relied on Greszler's testimony relative to the advice he received from Shop Steward Miller and attributed such testimony to McHenry. The Trial Examiner found that, "according to McHenry, the steward told him his checkoff authorization was still in force and that the only way to eliminate it was to send revocation notices to the Company and the Union and to have the letters in by October 20." The record indicates, however, that McHenry spoke to his union

steward after he had submitted his revocation, and the steward advised McHenry that the revocation submitted during either 15-day period prior to the anniversary of the union contract date or the dues-deduction authorization date would have been timely to revoke the checkoff authorization.

⁶ Whether the matter would be resolved differently had the Charging Parties resigned from Respondent Union in an attempt to short circuit their voluntary agreement that the dues-deduction authorization would automatically be renewed for a yearly period absent a timely revocation, we do not decide.

certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

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 Trial Examiner and hereby orders that the Respondent, International Association of Machinists & Aerospace Workers, Local Lodge No. 933, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Misleading employees of Hughes Aircraft Company, Tucson Division, about when their dues-checkoff authorizations may be timely revoked, and from treating such authorizations as of continuing validity after Respondent has terminated the union membership of employees.

(b) Insisting or otherwise requiring Hughes Aircraft Company, Tucson Division, to deduct from the wages of Harry E. Ouder Kirk, Richard McHenry, and A. R. Greszler amounts equal to the Respondent's monthly membership dues pursuant to checkoff authorization executed by these employees prior to the termination of their union membership by Respondent.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

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

(a) Reimburse Harry E. Ouder Kirk, Richard McHenry, and A. R. Greszler for all sums improperly deducted from their wages for payment of union dues or an equivalent sum for a period of 6 months prior to the filing of the charge with the Board, together with interest thereon at the rate of 6 percent per annum.

(b) Post at all bulletin boards assigned to said Respondent Union at the Tucson Division facilities of Hughes Aircraft Company, and in the Respondent's business offices and meeting halls, copies of the attached notice marked "Appendix."⁷ Copies of said notice, to be furnished by the Regional Director for Region 28, after being duly signed by an authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. Upon request of the Regional Director, the Respondent shall supply him with a sufficient number of signed copies for posting by Hughes Aircraft Company, Tucson Division, if it be willing to do so, at its facilities near Tucson, Arizona.

(c) Notify the Regional Director for Region 28, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁷ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

APPENDIX

NOTICE TO ALL MEMBERS OF INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LOCAL LODGE NO. 933, AFL-CIO

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT mislead employees of Hughes Aircraft Company, Tucson Division, about when their dues-checkoff authorizations may be timely revoked, and will not treat such authorizations as of continuing validity after we have terminated the union membership of employees.

WE WILL NOT insist on or otherwise require Hughes Aircraft Company, Tucson Division, to, deduct from the wages of Harry E. Ouder Kirk, Richard McHenry, and A. R. Greszler an amount equal to our monthly membership dues pursuant to checkoff authorizations executed by these employees prior to our determination of their union membership.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL reimburse Harry E. Ouder Kirk, Richard McHenry, and A. R. Greszler, whose union membership we canceled and whose revocations of checkoff authorization we improperly refused to recognize, for all sums improperly deducted from their wages, pursuant to such authorizations, by Hughes Aircraft Company, Tucson Division, for a period of 6 months prior to the filing of charges by these employees with the National Labor Relations Board, together with interest thereon at the rate of 6 percent per annum.

INTERNATIONAL
ASSOCIATION OF
MACHINISTS &
AEROSPACE WORKERS,
LOCAL LODGE NO. 933,
AFL-CIO
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive

days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Federal Building, 230 North First Avenue, Phoenix, Arizona 85025, Telephone 261-3717, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Trial Examiner: These consolidated cases were heard before me at Tucson, Arizona, on July 12, 1966, pursuant to separate charges filed by three individuals, A. R. Greszler, Richard McHenry, and Harry E. Ouderkirk, on January 31 and April 14 and 15, 1966, respectively; a complaint dated April 25; and a complaint with order of consolidation dated June 20, 1966. The primary issue is whether or not the Respondent (also called the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, by refusing to recognize the Charging Parties' checkoff revocations and requiring the Company (Hughes Aircraft Company, Tucson Division)¹ to continue deducting union dues from their wages.

Upon the entire record,² including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Union,³ I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY AND THE LABOR ORGANIZATION INVOLVED

The Company is a corporation licensed to do business in Arizona, and is engaged in the design and manufacture of aircraft and missile components at its facilities near Tucson, Arizona, where it purchases and receives annually goods valued in excess of \$50,000 directly from points outside that State, and from where it ships annually finished products valued in excess of \$50,000 directly to points outside that State. I find that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Respondent (also called the Union) is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Disputes Over Revocation of Checkoff Authorizations

On October 17, 1961, Charging Party Ouderkirk signed a dues-checkoff authorization, on a form quoted in the then current collective-bargaining agreement. It authorized the Company "to deduct regular monthly Union dues" from his wages, "in accordance with

provisions of the Agreement between the Employer and the Union," and provided that it "shall be considered to have been re-executed and extended year to year hereafter for periods not to exceed one (1) year each if not cancelled . . . by *written notice* to the Employer, copy to the Union, bearing my signature and clock number, by registered mail dated *U.S. Post Office cancellation between November 15 and 30*, inclusive of the *then currently effective yearly period . . .*" (Emphasis supplied.)

On March 12 and October 3, 1963, respectively, Charging Parties McHenry and Greszler signed a new checkoff form (as quoted in the then current, and the present, collective-bargaining agreement). It authorized the Company to deduct from their wages "each month such sum . . . as is equivalent to the Union's regular monthly membership dues . . . in accordance with the provisions of the Collective Bargaining Agreement between the Employer and the Union," and provided:

This authorization and assignment shall be irrevocable for a period of one (1) year from this date, or until the termination of the applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization and assignment shall continue in full force and effect from year to year for one-year periods beyond the irrevocable period set forth above, and each subsequent one-year period shall be similarly irrevocable unless revoked by me giving *written notice* to the Employer and the Union, bearing my signature and payroll number, by certified mail dated by *U.S. Post Office cancellation at least ten (10) days, but not more than twenty-five (25) days* prior to the last day of any irrevocable period (Emphasis supplied.)

Thereafter, all three of the Charging Parties were laid off during parts of 1964 and 1965. They failed to apply to the Union for unemployment dues stamps during their layoffs, and their union membership was canceled.

The Company recalled McHenry and Greszler on October 1, 1965. By letters postmarked *October 15 and 14*, 1965, respectively, both of them notified the Company and the Union to revoke their 1963 checkoff authorizations. Computing the annual revocation period under the collective-bargaining agreement as extending from *September 28 through October 13* (25 to 10 days prior to the October 23 termination date of the agreement), the Company considered the revocation notices untimely (by 2 and 1 days, respectively) and declined to honor them. Thereafter, McHenry sent another revocation notice postmarked February 10, 1966,⁴ which likewise was rejected as untimely.

Ouderkirk was recalled on November 30, 1965. He had previously mailed revocation notices postmarked *November 14, 1962* (1 day outside the November 15 through 30 revocation period stated in his 1961 checkoff authorization), but none in subsequent years.

The Company resumed the monthly deduction of union dues from the wages of the three Charging Parties; their membership was automatically reinstated; and they are

¹ The name of the Respondent was amended at the hearing

² The General Counsel's motion to correct the record, dated August 29, 1966, is hereby granted and the record is corrected accordingly

³ The Union's motion to dismiss the complaint is hereby denied because of the findings and conclusions made hereinafter

⁴ This revocation notice was several days more than 25 days

prior to the March 12 anniversary date of McHenry's checkoff authorization. In the summer of 1965, the Company and Union had signed a written understanding that the 25- to-10-day revocation period preceded the termination date of the agreement, not the anniversary date of the checkoff authorization, in situations such as this

carried on the Union's membership rolls as members in good standing. McHenry and Greszler admitted receiving new paid-up dues books, as well as their original dues books, but Ouderkirk testified: "I have never received a union book since I have been in the Union." I discredit his denial.

Since April 1, 1966, by orders from its International, the Union has not automatically reinstated employees' membership. Unless an employee recalled after that date signs a reinstatement application, he is carried on the Union's records as a fees paying nonmember. Although Ouderkirk was invited on April 1 to sign a reinstatement application, and he declined, the evidence is undisputed that he had been automatically reinstated under the prior practice. Greszler had earlier refused to sign a reinstatement application, and McHenry had tendered his resignation from the Union with both his October and February revocation notices.

The grievance and arbitration procedure in the agreement (article XVI, section A) provides that *all* complaints "between the Employer and employees . . . and/or the Union" shall be settled through the procedure. Section B of that article provides that "the aggrieved employee, or the employee and his steward, or his steward" shall discuss the complaint "with respect to . . . the interpretation, application . . . or alleged violation . . . of this Agreement" with the employee's immediate supervisor. It further provides that if the answer to this oral grievance is not satisfactory, "the employee and/or his steward" must file a written grievance. Thereafter, under steps one and two of the procedure, the aggrieved employee is permitted to be present at the grievance meetings. If no settlement is reached, the grievance may be submitted to arbitration. Under subsection 3(a) of section D, "The decision of the Arbitrator shall be final and binding upon the parties."

The three Charging Parties protested orally about the continued checkoff of dues from their wages but did not file grievances challenging the deductions.

B. Misled by Union Stewards

Two of the Charging Parties contended at the hearing that their union stewards had caused them to mail revocation notices when they did by giving them misleading advice about the revocation period under the agreements and the checkoff authorizations.

McHenry testified that after getting his first paycheck in October 1965 he asked his steward why a month's dues had been deducted even though he was no longer a union member. According to McHenry, the steward told him that his checkoff authorization was still in force, that "the only way to eliminate it" was to send revocation notices to the Company and the Union, and to have the letters in by October 20. He thereafter mailed his revocation notice on October 14 (1 day after the revocation period as computed by the Company and the Union from the wording of the agreement and the checkoff authorization). McHenry's testimony stands undenied on the record. The Union, which was not represented by counsel at the hearing, did not call the steward to deny or verify the testimony. I credit McHenry's testimony about his being misled.

Ouderkirk testified that he was misled also by advice from his steward in November 1962, to mail his revocation in early. However, this testimony related to alleged occurrences far beyond 6 months preceding the filing of his charge. Moreover, I do not credit his testimony about what a steward supposedly told him in 1962. Because of

his demeanor on the stand, and his apparent eagerness to prove his case regardless of the facts, I find that he was not a reliable witness. Besides denying that he had ever received a union dues book, as noted above, he testified that he heard nothing about his 1962 revocation notice being untimely at the time, and "figured it was good." However, the record shows that he was telephoned by an employee in the Company's employee relations department on November 28, 1962 (within the November 15 through 30 revocation period), that he was then advised that his notice was untimely, and that he told the employee that he would write another revocation letter. For these reasons, and because of other conflicting testimony, I discredit his claim that he was misled in 1962.

C. Opposing Contentions

The General Counsel contends that while no charge was filed against the Company for the continued checkoff of dues from the wages of the three Charging Parties, the Company's action "was violative essentially and in substance of Section 8(a)(1) and (2)," and "where the employer has violated 8(a)(1) and (2) at the instance of the Union and as a result of acquiescing in an 'agreement' with the Union's demands, the Union, on the principle of . . . *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962), is guilty of violating 8(b)(1)(A)." The Union denies that it has violated any of the Charging Parties' Section 7 rights.

Concerning McHenry and Ouderkirk, the General Counsel contends that the evidence shows that union stewards misled them by giving them wrong information about when to mail the revocation notices, citing *Philadelphia Sheraton Corporation*, 136 NLRB 888, 896 (1962), and *Local 98D, International Union of Operating Engineers (Construction Fields Surveys, Inc.)*, 156 NLRB 545 (1966), which require a union to notify an employee about his membership obligations before demanding his discharge under a union-shop agreement. The Union, answering that it has no knowledge that the employees were given misleading information, argues that it merely insisted that the Company honor the contractual checkoff provisions, and did not demand the discharge of the Charging Parties, nor disturb their job opportunities in any way. The Union also contends that the termination and/or reinstatement of union membership concerns the Union's internal affairs, under the Section 8(b)(1)(A) proviso that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein," citing *Local 283, United Automobile Workers, UAW-AFL-CIO (Wisconsin Motor Corporation)*, 145 NLRB 1097 (1964).

Concerning McHenry and Greszler, the General Counsel contends that the timeliness of their revocation notices should be determined by the Board under its principle for computing the 60-day notice provisions under Section 8(d) of the Act, *Ohio Oil Co.*, 91 NLRB 759, 761-763 (1950), and for computing the 6-month statute of limitation in Section 10(b), *Baltimore Transfer Co.*, 94 NLRB 1680, 1681-82 (1951). Although this asserted principle, of starting the statutory period "at midnight either preceding or after the occurrence of the initiating event," might or might not have the effect of extending the revocation period 1 day (until October 14, when Greszler's notice was postmarked), the General Counsel does not indicate how that principle would be applicable to McHenry's notice, postmarked 2 days after the revocation period as computed by the Company and the Union. Alternatively, the General Counsel contends that the oral

protests by McHenry and Greszler, as well as by Ouderkirk, against the continued dues checkoff were sufficient to nullify the checkoff authorizations, in view of the termination of their union membership. In support of this theory, the General Counsel cites *Penn Cork & Closures, Inc.*, 156 NLRB 411 (1965), where the Board held that "when there has 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." None of the collective-bargaining agreements in evidence contains such union-shop provisions, and there is no evidence that the Charging Parties' signing of the checkoff authorizations was not entirely voluntary. The Union, on the other hand, contends that the under "relevant" arbitration decisions concerning the interpretation and application of dues-checkoff provisions in collective-bargaining agreements, the revocation notices were untimely, and arbitrators have repeatedly held that checkoff authorizations are binding legal contracts which must be honored according to their terms, whether or not membership in the Union is continued. *Minneapolis-Honeywell Regulator Co.*, 36 LA 1138 (1961); *Bell Helicopter Co.*, 36 LA 933 (1961); *International Shoe Co.*, 36 LA 867 (1961); and *Eugene Rothmund Co.*, 14 LA 676 (1950).

Further concerning Ouderkirk's checkoff, the General Counsel contends that although the authorization provided for automatic extension from year to year, it "failed to provide" in its initial term "that it was irrevocable for a period of no more than one year, or the termination date of the applicable collective bargaining agreement, whichever occurred sooner." The General Counsel then contends: "Whether or not the violation of 302(c)(4) of the Act constitutes an unfair labor practice," [which it clearly does not, *Salant & Salant*, 88 NLRB 816, 817-819 (1950)], Ouderkirk's checkoff authorization was automatically canceled (1) by the Company and the Union entering into a new agreement, setting out a different type checkoff authorization form, and (2) by the termination of Ouderkirk's union membership, inasmuch as the checkoff authorized the deduction of "regular monthly dues," and he no longer owed union dues. The General Counsel also contends that the 1-day early notice in 1962 was "substantially" timely and should be accepted, and that the continued deduction of the dues was a "continuing violation." The Union, in addition to citing the "relevant" arbitration decisions, contends that a determination of the legality of the checkoff is within the jurisdiction of the Justice Department, which has the responsibility of enforcing Section 302(c)(4) of the Act, and cites the Justice Department's leading opinion on checkoffs, 22 LRRM 46 (1948).

D. Concluding Findings

In agreement with the General Counsel, I find that the Union violated Section 8(b)(1)(A) of the Act by refusing to recognize McHenry's October 15, 1965, checkoff revocation notice and requiring the Company to continue deducting union dues from his wages. In the absence of a union-security provision in the collective-bargaining agreement, McHenry had a Section 7 right to refrain from assisting, or supporting, the Union during the ensuing year, unless he was contractually bound by his voluntarily executed checkoff authorization. In order to avoid being so bound, he attempted to send timely revocation notices. However, misleading information from his union steward,

about the contractual revocation period, caused him to submit untimely notices.

Because of the wording of the agreement and the checkoff authorization, I must assume that the union steward intentionally misled McHenry. Under no possible interpretation of the contractual provision could the steward reasonably have concluded that the revocation period (of 25 to 10 days prior to the October 23 termination date of the agreement) would extend until October 20. It could be argued that McHenry should not be permitted to rely on such false information, instead of reading and interpreting the contractual language himself. But where, as here, the Union intentionally misled the employee, to interfere with his contractual right to revoke his checkoff authorization, I find that the Union thereby restrained him in the exercise of his Section 7 right to refrain from supporting the Union.

In the cases of Greszler and Ouderkirk, however, the Union has not tricked them into submitting untimely revocation notices. Neither has the Union taken any action to interfere with their employment status. The Union has merely urged its interpretation of the employees' contractual obligations under the checkoff provisions in the agreement, and under the express wording of the checkoff authorizations. Furthermore, the Company agrees with the Union's interpretations. Apparently guided by applicable arbitration decisions, these two parties to the collective-bargaining agreement conclude that, under the checkoff provisions, each employee is bound by his voluntarily executed checkoff authorization for its term, regardless of whether or not his union membership continues without interruption; that the annual revocation period must be strictly applied as written; and that the revocation notices must be in writing and timely.

The General Counsel does not contend that the parties to the agreement are acting in bad faith in interpreting and applying it. Rather, the General Counsel seeks the Board to place its own construction on the contract language, and to rule that the mutual interpretation and application of the agreement by the parties is improper and therefore violates the Act.

Under somewhat similar circumstances, where an employer was charged with failing to honor checkoff revocations which it contended were untimely, the Board held that "this proceeding involves essentially a dispute concerning the meaning and administration of the checkoff provisions of [the] contract, as implemented by the employees' authorization," and concluded that "it will not effectuate the policies of the Act for [the Board] to police collective bargaining agreements by attempting to resolve disputes over their meaning or administration, particularly where . . . the Respondent acted reasonably and in good faith." *Morton Salt Company*, 119 NLRB 1402, 1403 (1958). While the Board, since that decision, has not refrained from determining contract issues where such a determination was considered essential for the enforcement of statutory rights [see *C & S Industries, Inc.*, 158 NLRB 454 (1966)], there appear to be compelling reasons here, as in the *Morton Salt* case, for the Board to exercise its discretion not to intrude in the contracting parties' interpretation and application of their agreement. In apparent reliance on well-established arbitration principles for construing contractual checkoff provisions, the contracting parties have reached an accord in the administration of their agreement. If the Board were to intervene and provide a different forum, without any showing that the contracting parties have reached a result

repugnant to the purposes of the Act, the Board would needlessly risk "frustrating the Act's policy of promoting industrial stabilization through collective bargaining." *Montgomery Ward & Co.*, 137 NLRB 418, 423 (1962).

Greszler and Ouder Kirk, in charging the Union with unfair rejection of their revocation notices, should be in no better position than they would have been if they had followed the grievance and arbitration procedure, as required by the agreement for the resolution of all such complaints. If they had filed grievances, to complain about either the general construction of the contractual checkoff provisions, or the application of the rules of construction to their individual situations, they would have been permitted to attend the grievance meetings, along with representatives of the Company and the Union. In the event that the Union and the Company had not been persuaded by their contentions (or they had not been persuaded by the purportedly applicable arbitration decisions), Greszler and Ouder Kirk could have insisted on arbitration. Then if the Union had refused to refer the cases to arbitration, they could have raised the question of whether or not the Union was providing them with fair representation as their collective-bargaining representative. Undoubtedly, any applicable arbitration decisions would have been material in determining the reasonableness of the Union's conduct. Where, as here, the employees have bypassed the exclusive machinery set out in the agreement for resolving such contract disputes, the Board

should make no different requirement of fair representation.

The General Counsel, having failed to prove any violation of Greszler's and Ouder Kirk's Section 7 rights, I find that the Union has not violated Section 8(b)(1)(A) with respect to them.

CONCLUSIONS OF LAW

1. By intentionally misleading Richard McHenry concerning when to revoke his checkoff authorization, causing him to submit untimely revocation notices, the Union has engaged in an unfair labor practice affecting commerce within the meaning of Sections 8(b)(1)(A) and 2(6) and (7) of the Act.

2. The Union did not violate Section 8(b)(1)(A) of the Act by rejecting the checkoff revocation notices of A. R. Greszler and Harry E. Ouder Kirk.

THE REMEDY

Having found that the Respondent has committed an unfair labor practice, I shall recommend that it be ordered to cease and desist from such conduct and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]