

**American Telephone and Telegraph Company and
James E. Baumann**

**Communications Workers of America Local 3108,
AFL-CIO and James E. Baumann.** Cases 12-
CA-13901 and 12-CB-3349

July 31, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Upon a charge and an amended charge filed by James E. Baumann on April 2, 1990, and September 12, 1990, in Case 12-CB-3349, and a charge filed by Baumann on April 2, 1990 in Case 12-CA-13901, the Regional Director for Region 12 issued a consolidated complaint and notice of hearing on September 20, 1990. The complaint alleges that Respondent American Telephone and Telegraph Company (AT&T) has violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act by deducting membership dues from the wages of the Charging Party pursuant to his checkoff authorization after he effectively resigned his union membership. The complaint further alleges that Respondent Communications Workers of America, Local 3108, AFL-CIO (Local 3108) has violated Section 8(b)(1)(A) and (2) of the Act by receiving, accepting, and retaining membership dues withheld from the wages of the Charging Party after he effectively resigned his union membership. The Respondents both filed answers admitting in part and denying in part the allegations of the complaint and requesting that the complaint be dismissed.

On November 20, 1990, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and brief in support thereof. On November 21, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Each Respondent filed a response to the Notice to Show Cause and opposition to the Motion for Summary Judgment.

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

Ruling on Motion for Summary Judgment

The following facts are admitted or undisputed. Local 3108 and AT&T have been parties to successive collective-bargaining agreements, the most recent of which is effective from May 28, 1989, to May 30, 1992. The agreement provides that employees who become members of Local 3108 may authorize AT&T to make monthly periodic deductions from their paychecks in amounts equal to periodic union dues and

remit those dues to Local 3108, by executing a dues-checkoff authorization card.¹

On February 8, 1988, AT&T employee James E. Baumann executed a checkoff authorization card.² On January 4, 1990, Baumann notified Local 3108 and AT&T of his resignation of union membership and requested the cessation of his dues deduction. On January 24, 1990, AT&T notified Baumann that it could not process his dues-checkoff revocation because it was not made during the period for revocation set forth in his checkoff authorization. Accordingly, AT&T has continued to deduct membership dues from Baumann's wages and forward the dues to Local 3108, which has received accepted, and, retained them.

The General Counsel contends that continued deductions following resignation constitutes an unlawful restriction on an employee's right to resign union membership under *Pattern Makers League v. NLRB*.³ The General Counsel alternatively argues that resignation operates to reduce an employee's dues obligation to zero, since the employee is no longer a union member following resignation. Local 3108 and AT&T contend, inter alia, that the checkoff authorization voluntarily signed by Baumann is a contract which may only be revoked within the contractually permissible period. Because Baumann failed to revoke the authorization within that permissible period, and because the authorization explicitly states that it is neither conditioned on present or future membership in the Union, Local 3108 and AT&T argue that they may lawfully continue to deduct and receive dues pursuant to the authorization even after Baumann's resignation from union membership.

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,⁴ the Board set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-

¹ The agreement also contains an agency-shop clause requiring the payment of amounts equivalent to union dues and fees but not requiring union membership. Under Florida statutes, employees may not be required to join a union or pay dues as a condition of employment.

² The checkoff authorization card signed by Baumann provides in pertinent part:

Beginning in __ (Month) __, __ (Year) __, I hereby authorize AT&T Information Systems Inc. to deduct each month from my salary or wages, sickness or accident disability payments, or vacation payments the amount of regular monthly Union dues as certified to the Company by the Secretary-Treasurer of the Communications Workers of America. This authorization is voluntarily made and is neither conditioned on my present or future membership of [sic] the Union, nor is it to be considered as quid pro quo. Each amount so deducted shall be remitted by the Company to the Secretary-Treasurer of the Communications Workers of America or his duly authorized agent. If for any reason the Company fails to make a deduction, I authorize the Company to make such deduction in a subsequent payroll period. This authorization shall continue in effect until canceled by written notice signed by me and individually sent by certified or registered mail to the Company, postmarked during the fourteen(14) day period prior to each anniversary date of the current or any subsequent Collective Bargaining Agreement, or during the fourteen(14) day period prior to the termination date of the current or any subsequent Collective Bargaining Agreement.

³ 473 U.S. 95 (1985).

⁴ 302 NLRB 322 (1991).

checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying union dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.⁵ In order to give full effect to these fundamental labor policies, the Board stated that it would

construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the method by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. [Id. at 328–329.]⁶

⁵ *Metropolitan Edison v. NLRB*, 460 U.S. 693, 708 (1983).

⁶ In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. Notwithstanding the

Applying the analysis of *Lockheed* to the facts in this case, we find that the Respondents have shown that the dues-checkoff authorization signed by the Charging Party obligated him to pay dues after his effective resignation from membership in Local 3108. The authorization signed by Baumann provides that it is “voluntarily made and is neither conditioned on my present or future membership of [sic] the Union” We find that Baumann thus clearly authorized the continuation of his dues deduction even in the absence of union membership. Because there is explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership, dues were still owing under Baumann's checkoff authorization after his resignation.⁷ Inasmuch as under the checkoff authorization which he executed Baumann continued to have a dues obligation after his effective resignation from the Union, we conclude that Respondent AT&T did not violate the Act by deducting dues from his wages after his resignation, and that Respondent Local 3108 did not violate the Act by receiving, accepting, and retaining those dues. Accordingly, we deny the General Counsel's Motion for Summary Judgment and we shall dismiss the complaint.

ORDER

The complaint is dismissed.

inclusion of an agency-shop clause in the collective-bargaining agreement (see fn. 1, *supra*), we note that the sole basis cited by the Respondent Union for continuing to extract membership dues after an attempt to resign was the checkoff authorization itself. See also *Rubber Workers Local 915 (Dunlop Tire)*, 302 NLRB 428, 429 fns. 2 and 8 (1991).

⁷ See *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991).