

**American Telephone and Telegraph Company and
Loretta J. Gawel**

**Communications Workers of America, Local 3102,
AFL-CIO and Loretta J. Gawel.** Case 12-CA-
13628 and 12-CB-3313

July 31, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Upon a charge filed by Loretta J. Gawel on November 6, 1989, in Case 12-CA-13628 and a charge filed by Gawel on November 9, 1989, in Case 12-CB-3313, the Regional Director for Region 12 issued a consolidated complaint and notice of hearing on June 22, 1990. The complaint alleges that Respondent American Telephone and Telegraph Company (AT&T) has violated Section 8(a)(1) and (3) of the National Labor Relations Act by deducting membership dues from the wages of the Charging Party pursuant to her checkoff authorization after she effectively resigned union membership. The complaint further alleges that Respondent Communications Workers of America, Local 3102, AFL-CIO (Local 3102) 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 pursuant to her checkoff authorization after she effectively resigned 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 August 15, 1990, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and brief in support thereof. On August 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 General Counsel filed a reply brief. The Charging Party filed a brief in support of the General Counsel's Motion for Summary Judgment. Local 3102 filed a reply brief, and the Charging Party filed a response.

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 3102 and AT&T have been parties to successive collective-bargaining agreements, the most recent of which is effective from June 1, 1989, and at least

through June 22, 1990, when the complaint issued.¹ The agreement provides that employees who become members of Local 3102 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 3102, by executing a dues-checkoff authorization card.²

On April 12, 1988, AT&T employee Loretta J. Gawel executed a checkoff-authorization card.³ On April 28, 1989, Gawel notified Local 3102 of her resignation of union membership. On April 29, 1989, Gawel notified AT&T of her resignation and requested the revocation of her dues checkoff authorization. On May 3, 1989, AT&T notified Gawel that it could not process her dues-checkoff revocation because it was not made during the period for revocation set forth in her checkoff authorization. Accordingly, AT&T has continued to deduct membership dues from Gawel's wages and forward the dues to Local 3102, which has received, accepted, and retained them.

The General Counsel and the Charging Party contend, inter alia, that continued deductions following resignation constitutes an unlawful restriction on an employee's right to resign union membership under *Pattern Makers League v. NLRB*.⁴ The General Counsel and the Charging Party alternatively argue that resignation operates to reduce an employee's dues obligation to zero, because the employee is no longer a union member following resignation. Local 3102 and AT&T argue, inter alia, that the checkoff authorization voluntarily signed by Gawel is a contract which may be revoked only within the contractually permissible period. Because Gawel failed to revoke the authorization within that permissible period, and since the authorization explicitly states that it is neither conditioned on present or future membership in the Union, Local 3102 and AT&T argue that they may lawfully continue to deduct and receive dues pursuant to the au-

¹The expiration date of the most recent agreement is not set forth in the record.

²The 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.

³The checkoff authorization card signed by Gawel provides in pertinent part:

Beginning in _____, I hereby authorize AT&T to deduct, each pay period from my salary or wages, sickness or accident disability payments, or vacation payments the amount of regular union dues prorated for the pay period or an amount equivalent thereto 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 in the Union, nor is it to be considered as the quid pro quo for membership. 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. This authorization shall continue in effect until canceled by written notice signed by me, and individually sent by certified mail to the Company, during the fourteen (14) day period prior to the anniversary date or termination date of the current or any subsequent Collective Bargaining Agreement.

⁴473 U.S. 95 (1985).

thorization even after Gawel's resignation from union membership.

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,⁵ the Board set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-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.⁶ 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.]⁷

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 her to pay dues after her effective resignation from membership in Local 3102. The authorization signed by Gawel provides that it is “voluntarily made and is neither conditioned on my present or future membership in the Union” We find that Gawel thus clearly authorized the continuation of her 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 Gawel's checkoff authorization after her resignation.⁸ Inasmuch as under the checkoff authorization that she executed Gawel continued to have a dues obligation after her effective resignation from the Union, we conclude that Respondent AT&T did not violate the Act by deducting dues from her wages after her 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.

⁷In *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 inclusion of an agency-shop clause in the collective-bargaining agreement (see fn. 2, *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).

⁸See *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991).

⁵302 NLRB 322 (1991).

⁶*Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).