

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 3, 2008

TO : James Small, Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: United Stationers Supply Company 524-5030
Case 21-CA-38091 524-5090-8350-5000

This case was submitted for advice as to whether the Employer violated Section 8(a)(1) and (3) of the Act by refusing to honor an employee petition revoking dues checkoff authorizations. We agree with the Region that the Employer did not violate the Act because the employees failed to notify the Union of their revocations, as required by the checkoff authorizations.

FACTS

United Stationers Supply Company (the Employer) and the United Industrial and Service Workers of America (Union) have had a collective-bargaining relationship for approximately 12 years. The parties' most recent collective-bargaining agreement was effective September 1, 2004 through August 31, 2007.¹ The agreement contained a union security clause along with a dues checkoff clause permitting the Employer to "make payroll deductions of Union dues and initiation fees upon proper written authorization from its employees." Employees authorized dues checkoff by signing an authorization form that stated:

I hereby authorize [the Employer] to deduct from wages earned by me as your employee, and assign to [the Union] sum of money set by the Union per week or month in payment of my membership dues, in accordance with its Constitution and Bylaws.

This assignment, authorization, and direction shall be irrevocable for the period of one (1) year, or until termination of the current agreement between the Employer and the Union, whichever occurs sooner. I agree and direct that this assignment, authorization, and direction shall be automatically renewed and shall be

¹ All dates hereinafter are in 2007, unless otherwise noted.

irrevocable for the successive periods of one (1) year, or for the period of each succeeding applicable agreement between the Employer and the Union, whichever shall be shorter, unless written notice is given by me to the Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of one (1) year, or of each applicable collective bargaining agreement between the Employer and the Union, whichever occurs sooner.

In June, Teamsters Union Local No. 63 (the Teamsters) filed the representation petition in Case 21-RC-20971, seeking to represent the unit currently represented by the Union. The petition in Case-RC-20971 is currently blocked because of two unfair labor practice charges filed by the Union against the Employer.²

In July, employee Josie Ramos contacted the Teamsters to find out how to discourage the Union from wanting to represent the employees, and to get a representation election faster. The Teamsters suggested that the employees present the Employer with a petition revoking their dues checkoff authorizations and volunteered to draft such a petition. The petition stated:

Effective immediately, we, the undersigned, hereby withdraw our consent to any former authorization(s) we may have given you to deduct Union dues or any other amounts whatsoever from our pay and remit same to [the Union] or its successor. All such authorizations are hereby null and void.

Ramos and two other employees, Danny Rivera and Daniel Jimenez, were able to secure signatures for the petition from 60 of the 196 unit employees.³ It appears that Ramos and another employee presented Employer manager Steve

² The Region issued complaint on these two charges (Cases 21-CA-37821 and 21-CA-37840), and the Employer executed a unilateral Informal Settlement Agreement. The Union's appeal of the settlement was denied. Cases 21-CA-37821 and 21-CA-37840 are currently in compliance.

³ All 60 employees had originally signed authorization forms with the language set forth above.

Isaacs with the original copy of the petition sometime in late August.⁴

When the collective-bargaining agreement was set to expire on August 31, the parties executed a day-to-day extension agreement, terminable by either party, so that the agreement and its provisions would remain in effect while the parties negotiate for a new agreement. The parties have continued to operate under the extension agreement since that time.

In about the middle of September, Rivera asked Isaacs if the Employer was going to stop deducting union dues from employees' paychecks. Isaacs responded that the Employer did not have any control over the matter, and that it was between the Union and the National Labor Relations Board.

At the beginning of October, Rivera asked another Employer representative why Union dues were still being deducted from his paycheck and when the Employer was going to stop deducting them. About a week later, the Employer representative called Rivera into his office and presented him with a copy of the dues checkoff authorization form that Rivera had signed when he was hired. The Employer representative told Rivera that his dues were still being deducted because he had signed the authorization form.

In November, the instant charge was filed alleging that the Employer violated Section 8(a)(1) and (3) of the Act by continuing to deduct Union dues from employees' paychecks, and remitting those dues to the Union despite the expiration of the parties' contract and receipt of an employee petition revoking dues checkoff authorizations.

The Employer continued to deduct dues from employees' paychecks. The Region concluded during the investigation that there is no evidence that the Union received a copy or notice of the employee petition, or that any employees individually presented the Union with written notice of their revocations. However, after being advised by the

⁴ The exact date the petition was received by the Employer is unclear. While the receipt indicates that the petition was received on September 24, the Employer contends that the petition was received prior to August 31, and Ramos claims to have provided the Employer with the petition "at about the end of August." Thus, it appears that the petition was received sometime in August and that the September date on the receipt was an error.

Region during the investigation, Rivera served the Union with a copy of the petition on January 16, 2008.⁵

ACTION

We agree with the Region that the case should be dismissed because the employees did not revoke their checkoff authorizations because they failed to notify the Union of their revocations, as required by the checkoff authorizations.

It is well established that unions must provide their members with the ability to revoke their checkoff authorizations at least once a year and at the termination of an applicable collective bargaining agreement.⁶ Moreover, depending on the language of the authorizations themselves, checkoff authorizations are revocable at will in periods where no collective bargaining agreement is in place.⁷ It has been suggested that checkoff authorizations may even be revocable at will when the parties are operating under an indefinite extension of the expired agreement.⁸ We need not determine, however, whether, because the contract here remained in effect only by virtue of the parties' day-to-day extension, the authorizations

⁵ It is not clear whether the employees at issue gave new notice to the Employer in January 2008 of their intent to revoke their dues checkoff authorizations. In any case, the Region has not submitted for advice the issue of whether the employees perfected their notice of revocation at that time, or whether the Employer violated the Act by continuing to check off dues after January 2008.

⁶ See generally Frito-Lay, Inc., 243 NLRB 137, 138 (1979); Atlanta Printing Specialties, 215 NLRB 237, 237 (1974), enfd. 523 F.2d 783 (6th Cir. 1975).

⁷ See Frito-Lay, 243 NLRB at 138-139. But see Anheuser-Busch, Inc. v. International Brotherhood of Teamsters, Local 822, 584 F.2d 41, 43 (4th Cir. 1978) (regardless of authorization language, authorizations are revocable at will during hiatus periods).

⁸ Murtha v. Pet Dairy Products Company, 314 S.W.2d 185, 189-190 (Tenn. App. 1957) (authorizations were revocable at will during the period where an old agreement was extended day-to-day until a new agreement was reached).

were revocable at will or whether the contractual time limits on revocation remained in effect. In either event, as discussed infra, we conclude that the employees' revocations were ineffective because they failed to give notice to the Union.

Thus, the Board has repeatedly held that an authorization that requires notice to be given to both the employer and the union is lawful.⁹ Indeed, where notice is required to be given to both the employer and the union, an employer is not entitled to give effect to any revocations in the absence of valid timely notice to the union.¹⁰

In the instant case, it is undisputed that the employees' checkoff authorizations required that notice of revocation be given to both the Employer and the Union, and that notice was not given to the Union when the revocation petition was given to the Employer. Because the employees failed to comply with the clear language in their checkoff authorization stating that authorization will be automatically renewed "unless written notice is given by me to the Employer and the Union," the Employer lawfully continued to deduct the employees' dues.¹¹ Therefore, we agree with the Region that the Employer did not violate the Act because the employees failed to notify the Union of their revocations, as required by the checkoff authorizations.

Finally, we note that the type of revocation at issue in the instant case, i.e., revocation of dues checkoff authorization, presents different considerations from those at issue with regard to revocation of union authorization cards. Thus, our conclusion here is not inconsistent with the General Counsel's view that limitations should be

⁹ Rock-Tenn Company, 238 NLRB 403, 408 (1978), enfd. 594 F.2d 862 (5th Cir. 1979). See also American Commercial Lines, 296 NLRB 622, 656 (1996), overruled with respect to remedy for other violations, J.E. Brown Electric, 315 NLRB 620, 623 (1994).

¹⁰ Rock-Tenn Company, 238 NLRB at 408; American Commercial Lines, 296 NLRB at 656.

¹¹ As noted above, while the Union was eventually given a copy of the petition in January 2008, it is not clear whether the Employer was notified again at that time. The Region has not submitted this issue for advice.

placed on the Board's finding in Alpha Beta Co.¹² that, "an authorization card cannot be effectively revoked in the absence of notification to the union prior to the demand for recognition." The General Counsel has argued that, in certain situations, notice to the employer alone should be sufficient to revoke a union authorization card, as long as the language of the notice clearly and unambiguously establishes that the employees are repudiating support for a union.¹³ This position is based on the Supreme Court's decision in Int'l Ladies Garment Workers (Bernhard-Altman Texas Corp.) v. NLRB,¹⁴ requiring actual majority support at the time of recognition.¹⁵ Unlike revocation of authorization cards indicating support for a union, revocation of dues checkoff authorization does not affect employees' free choice as to union representation. Indeed, the employees in the instant case are already represented by the Union and will continue to owe the same amounts to the Union, regardless of whether their checkoff authorization is effective. The dues checkoff is simply a contractual arrangement covering the method of dues payment. Therefore, there is no rationale similar to that expressed in the union authorization cards cases cited above that would override the requirement that notice of revocation be given to both the Employer and the Union before the revocation is effective.

¹² 294 NLRB 228, 230 (1989).

¹³ See Plastech Engineered Products, Inc., 10-CA-35554 et. al., Advice Memorandum dated June 27, 2005; Goodyear Tire and Rubber Co., 11-CB-3487 et. al., Advice Memorandum dated October 29, 2004. In both memoranda, the General Counsel distinguished Alpha Beta because it was unclear whether the employees were repudiating their support for the union or attempting to revoke authorizations cards to allow everyone to vote instead.

¹⁴ 366 U.S. 731, 737-738 (1961).

¹⁵ See Plastech Engineered Products, above; Four Points by Sheraton, Case 31-CA-26855-1, General Counsel's Minute dated September 15, 2004.

Accordingly, the charge in the instant case should be dismissed, absent withdrawal.

B.J.K.