Tribune Publishing Company *and* Graphic Communications International Union Local 16–C. Case 17–CA–21700

September 28, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On February 5, 2003, Administrative Law Judge William N. Cates issued the attached bench decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and the briefs and has decided to affirm the judge's rulings, findings, and conclusions as explained below, and to adopt the recommended Order as modified and set forth in full below.[1]

I. BACKGROUND

The Respondent and the Union have been parties to a series of successive collective-bargaining agreements. The most recent agreement contained a union-security clause. It also included a dues-checkoff provision, which provided that, upon the employees' individual authorizations, the Respondent would withhold their union dues from their paychecks. On November 30, 2001, the collective-bargaining agreement expired, and on December 19, the Respondent informed employees that it would no longer deduct union dues from their paychecks.

Thereafter, for several months, Union Secretary-Treasurer Roger Hall collected dues directly from employees. Then, in March 2002,[2] Hall approached the Respondent's payroll coordinator about the possibility of using the Respondent's direct-deposit procedure for the deduction of union dues from employees' paychecks.[3] Hall thereafter distributed copies of partially completed direct-deposit authorization forms to the unit employees.[4] After employees completed and signed the forms, Hall collected them and brought them to the Respondent's administrative manager, Mary Twenter. Twenter agreed to the use of the Respondent's direct-deposit procedure for the payment of union dues and, according to Hall's unrebutted testimony, told Hall that she believed it was "a good idea." She also offered to provide the Union with an itemized statement identifying the employees who used direct deposit for this purpose, as well as the corresponding amount of their payments.

On April 26, the Respondent conducted a successful "trial run" of the transfer of union dues through the direct-deposit system (i.e., no funds actually were transferred at that time). Following the trial run, on May 10, the Respondent effectuated the direct deposit of employee union dues and provided to the Union an itemized list containing the names of unit employees and the amount of their corresponding payments.

On May 21, however, the Respondent notified the Union that it would no longer permit use of the direct-deposit system for dues payments. Specifically, the Respondent advised the Union and the employees that, from its perspective, use of the direct-deposit procedure for the collection of union dues was indistinguishable from dues checkoff under the parties' expired agreement and that, as the Respondent earlier had exercised its legal right to discontinue dues checkoff after the agreement had expired, the Respondent had erred by effectively reinstating dues checkoff through the use of its direct-deposit procedure.

The General Counsel alleged that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing the direct deposit of employees' union dues.[5]

II. JUDGE'S DECISION

As an initial matter, the judge found inapplicable the Board's case law under which an employer may unilaterally discontinue dues checkoff after the expiration of a

[1] We shall modify the judge's recommended Order to conform more closely to the Board's standard remedial language for unlawful unilateral changes. See, e.g., *Mimbres Memorial Hospital*, 337 NLRB 998 (2002), petition for review denied sub nom. *NLRB v. CHS Community Health Systems, Inc.*, 108 Fed.Appx. 577 (10th Cir. 2004). We shall also substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[2] All subsequent dates are in 2002, unless otherwise indicated.

[3] The Respondent instituted its direct-deposit policy in 1993. That policy, which is set forth in the Respondent's employee handbook, pertinently provides:

> All Tribune employees are encouraged to sign up for direct payroll deposit. Direct deposit allows your paycheck to be electronically deposited in your bank first thing payday morning. We have the capability to deposit in virtually any bank and up to four banks per employee. You may pay loans, deposit to savings accounts and have your net pay deposited in your checking account. Contact the payroll coordinator for sign-up materials.

There is neither contention nor evidence that the Respondent's employee handbook was incorporated by reference in the parties' expired collective-bargaining agreement.

[4] Hall testified that he entered the employees' names and work departments, as well as the bank name, union account number, and the amount of the deduction on each of the forms.

[5] The General Counsel also alleged that the elimination of dues deductions through direct deposit violated Sec. 8(a)(3), and the judge so concluded. We find it unnecessary to pass on this conclusion because it would not materially affect the remedy. See, e.g., *Waste Management de Puerto Rico*, 348 NLRB 565, 565 fn. 3 (2006); *675 West End Owners Corp.*, 345 NLRB 324, 324 fn. 3 (2005).

collective-bargaining agreement.[6] In this regard, the judge determined that the Respondent's direct-deposit system set forth in the Respondent's employee handbook is separate and distinct from the dues-checkoff procedure in the parties' expired contract because the direct-deposit procedure is strictly between the Respondent and individual employees, whereas the dues-checkoff procedure was a contractual arrangement between the Respondent and the Union. The judge concluded that direct-deposit payroll deductions are terms and conditions of employment and mandatory subjects of bargaining and, thus, that the Respondent violated Section 8(a)(5) and (1) by discontinuing the use of the direct-deposit system for union dues without first bargaining with the Union.

III. RESPONDENT'S EXCEPTIONS

The Respondent contends that the direct deposit of union dues is indistinguishable from dues-checkoff arrangements and, thus, that under Board precedent it was permitted to terminate the use of its direct-deposit procedures for the payment of union dues. In addition, the Respondent claims that its discontinuance of the payment of union dues through direct deposit was not a unilateral change in established terms and conditions of employment. In this connection, the Respondent asserts that it allowed deduction of union dues through direct deposit only once, and thus, the nonuse of the direct-deposit system for that purpose represents the status quo. The Respondent also claims that, in any event, it was not required to bargain with the Union regarding the discontinuance of the payment of union dues through direct deposit because the employee handbook, in which the direct-deposit system is set forth, specifically reserves to the Respondent the right to interpret and modify that system.[7] According to the Respondent, this reservation of rights is confirmed by the fact that the Respondent routinely has made changes to handbook provisions in the past, without any complaint from the Union.

IV. ANALYSIS

The Respondent claims that it has the right to unilaterally terminate the use of its direct-deposit system for the deduction of union dues because the collective-bargaining agreement had expired. However, the issue before us is not whether the Respondent had the right to unilaterally cease dues checkoff after the collective-bargaining agreement expired. Rather, the issue is whether the Respondent, *after* unilaterally ceasing dues checkoff but later reaching a new agreement with the Union to allow employees to use direct deposit for the deduction of their union dues, could unilaterally terminate the use of direct deposit for that purpose.[8] For the reasons that follow, we find that it could not.

If a term or condition of employment concerns a mandatory subject of bargaining, an employer generally may not discontinue that term or condition without first bargaining with the union to impasse or agreement.[9] See *NLRB v. Katz*, 369 U.S. 736 (1962). Employee payroll deductions are mandatory subjects of bargaining. See *Quality House of Graphics*, 336 NLRB 497 (2001); *King Radio Corp.*, 166 NLRB 649 (1967), enfd. 398 F.2d 14 (10th Cir. 1968). By extension, the direct deposit of such deductions is also a mandatory bargaining subject. Once the employer, as here, expressly agrees, after contract expiration, to a payroll deduction whereby it agrees to remit to a third party (irrespective of whether the third party is a charity, a union or a creditor), the agreement to deduct pay is a term or condition of employment, which the employer generally may not discontinue without bargaining to impasse or agreement.

Here, after the parties' contract expired and the Respondent ceased dues deduction, Union Representative Hall met with Respondent's administrative manager, Twenter, who testified that she previously had been on the negotiating committee for the expired collective-

[6] Specifically, the judge discussed *Bethlehem Steel Co.*, 136 NLRB 1500, 1502 (1962) (holding that employer can terminate dues-deduction provision after contract expiration where expired contract contained union-security provision), and *Hacienda Resort Hotel & Casino*, 331 NLRB 665, 667 (2000) (holding that employer can terminate dues-deduction provision after contract expiration even where expired contract did not contain union-security clause), vacated and remanded sub nom. *Local Joint Executive Board of Las Vegas, Culinary Workers Local 226 v. NLRB*, 309 F.3d 578 (9th Cir. 2002). *Hacienda Resort Hotel & Casino* currently is pending before the Board on remand from the United States Court of Appeals for the Ninth Circuit.

[7] The "Notice to All Employees" appearing at the front of the Respondent's employee handbook provides:

> This handbook is intended only as a guide for policies, benefits and general information, designed to help you during your employment with the Tribune Publishing Company.
>
> The Tribune reserves the right to interpret the provisions and to make changes in the handbook content whenever changes are necessary. The company will strive to communicate, substitute or reprint policy changes when they occur.
>
> The handbook is not part of any employee contract.

[8] An employer does not violate the Act by voluntarily continuing dues checkoff after a collective-bargaining agreement has expired. See *Frito-Lay*, 243 NLRB 137 (1979); *Lowell Corrugated Container Corp.*, 177 NLRB 169 (1969), enfd. 431 F.2d 1196 (1st Cir. 1970). As a logical corollary to this principle, after a contract has expired and the employer has terminated dues checkoff, the employer may lawfully agree to resume deducting union dues.

[9] The Board has recognized exceptions to this general rule where "economic exigencies" compel prompt action, and where the union waives its right to bargain. See *Bottom Line Enterprises*, 302 NLRB 373 (1991), enfd. mem. sub nom. *Master Window Cleaning v. NLRB*, 15 F.3d 1087 (9th Cir. 1994). No economic exigencies are alleged here, and as discussed further below, the Union did not waive its right to bargain.

bargaining agreement and that she had oversight responsibility for, among other things, the Company's labor relations and human resources functions. It is undisputed that Twenter specifically agreed with Hall to allow employees to use the Respondent's direct-deposit system for the payment of union dues.[10] It also is undisputed that, after reaching that agreement, the Respondent conducted a full trial run and then implemented direct deposit of union dues for a full pay period. Accordingly, the deduction and direct deposit of union dues became the new status quo, i.e., a new term and condition of employment.[11] As direct deposit of payroll deductions is a mandatory subject of bargaining, the Respondent was required to bargain with the Union to impasse or agreement before it could terminate that practice. There is no dispute that no such bargaining occurred. Accordingly, even assuming arguendo that direct deposit of union dues and dues checkoff are functionally the same, the Respondent nonetheless violated Section 8(a)(5) and (1) of the Act by unilaterally terminating the use of its direct-deposit system for the deduction of union dues.

The Respondent asserts that the reservation of rights in the employee handbook permitted it to unilaterally interpret and modify the direct-deposit system provided for therein. We find this assertion unavailing. The Respondent neither modified nor interpreted the section of its employee handbook addressing the direct-deposit system. It simply discontinued one particular use of that system.[12] In doing so, it did not tell the Union or the employees that it was acting pursuant to a reserved right to interpret or modify the handbook. Rather, it relied on a claimed equivalence between direct deposit of union dues and dues checkoff. As explained above, even assuming that equivalence, the 8(a)(5) violation still lies. Moreover, the employee handbook, unilaterally promulgated by the Respondent, could not even arguably waive the Union's bargaining rights.

For the foregoing reasons, we adopt the judge's conclusion that the Respondent violated Section 8(a)(5) by unilaterally discontinuing the use of its direct-deposit system for the transmittal of employee union dues.

[10] In its answer to the complaint in this proceeding, the Respondent admitted that Twenter is an agent of the Respondent. Member Schaumber notes that the Respondent has not seriously contended that Twenter lacked the authority to agree to labor relations proposals. He also notes that there is no evidence that the Union knew or should have known that it was directing its proposal to the wrong person.

[11] Pursuant to the then-current general guidelines governing the use of the Respondent's direct-deposit system, individual employees are free to terminate the automatic deduction of union dues from their paychecks.

[12] Because the Respondent's discontinuance of one particular use of its direct-deposit system did not constitute a modification of the employee handbook, we need not address the Respondent's inapposite contention that the Union implicitly agreed to the change by acquiescing in past handbook modifications.

ORDER

The National Labor Relations Board adopts the recommended Order as modified below, and orders that the Respondent, Tribune Publishing Company, Columbia, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union as the duly designated representative of its employees in an appropriate bargaining unit by unilaterally discontinuing the use of its direct-deposit system to transmit union dues to the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) On request of the Union, and as individually authorized by unit employees, resume use of its direct-deposit system to transmit union dues to the Union.

(b) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All full-time and regular part-time employees including employees engaged in the operation of all printing presses operated by the employer at its Columbia, Missouri facility, excluding all office and clerical employees, guards and supervisors within the meaning of the National Labor Relations Act, and all other employees.

(c) Within 14 days after service by the Region, post at its facility in Columbia, Missouri, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 24, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf.

Act together with other employees for your benefit and protection.

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Graphic Communications International Union Local 16–C (the Union) as the duly designated representative of our employees in an appropriate bargaining unit by unilaterally discontinuing the use of our direct-deposit system to transmit union dues to the Union.

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

WE WILL, on request of the Union, and as individually authorized by unit employees, resume use of our direct-deposit system to transmit union dues to the Union.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of our unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All full-time and regular part-time employees including employees engaged in the operation of all printing presses operated by us at our Columbia, Missouri facility, excluding all office and clerical employees, guards and supervisors within the meaning of the National Labor Relations Act, and all other employees.

TRIBUNE PUBLISHING COMPANY

Frank Molenda, Esq. and *Ann Peressin, Esq.,* for the General Counsel.

L. Michael Zinser, Esq. and *Mary Twenter, Adm. Mgr.*, for the Respondent.

BENCH DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case involves denial of use of an established direct-deposit system for employees to transmit payment of their union dues to their union. At the conclusion of trial in the above-styled case in Columbia, Missouri, on January 17, 2003, and after hearing oral argument by the General Counsel and Respondent's counsel, I issued a bench decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's (Board) Rules and Regulations setting forth findings of fact and conclusions of law.

For the reasons stated by me on the record at the close of the trial, I found Tribune Publishing Company (Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) when on or about May 24, 2002, it denied its unit employees the use of its direct-deposit system to transmit payment of their union dues to Graphic Communications International Union Local 16–C (the Union). The evidence established the Respondent allowed the use of its direct-deposit procedure for any and all purposes except for the transmittal of union dues. I also concluded the Respondent violated Section 8(a)(5) and (1) of the Act when on or about that same date it discontinued, after a one time use, allowing its employees to use its direct-deposit system for the transmittal of their union dues to the Union. The evidence established the Respondent discontinued the use without notice to or bargaining with the Union about the discontinuance and/or the effects thereof. I rejected the Respondent's contention that using its direct-deposit procedure for the transmittal of union dues after the parties collective-bargaining agreement expired was simply a continuation of dues-deduction checkoff which it was not obligated to do. I concluded the Respondent's direct-deposit procedure was a separate procedure unrelated to the parties collective-bargaining agreement and could not be administered in a discriminatory manner nor could the Respondent unilaterally cease allowing use of the procedure, after having done so, without notice to or bargaining with the Union.

I certify the accuracy of the portion of the transcript, as corrected,[1] pages 97 to 115, containing my bench decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

[1] I have corrected the transcript pages containing my bench decision and the corrections are as reflected in attached appendix C [omitted from publication].

CONCLUSION OF LAW

The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that it violated the Act in the particulars and for the reasons stated at trial and summarized above and that its violations have affected and, unless permanently enjoined, will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found the Respondent disparately disallowed use of its direct-deposit procedure for the transmittal of union dues to the Union, I shall recommend the Respondent cease and desist such conduct and, on written request of the unit employees, allow the use of the procedure for the transmittal of union dues to the Union. I further recommend the Respondent give notice to and, on demand of the Union, bargain in good faith with the Union concerning any changes it might seek with respect to the use of its direct-deposit procedure for the transmittal of union dues to the Union. I shall also recommend the Respondent be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees," copies of which are attached as "Appendix B" for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and the Respondent's obligation to remedy its unfair labor practices.

[Recommended Order omitted from publication.]

APPENDIX A

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This is my decision in the matter of Tribune Publishing Company, herein "The Company", Case 17–CA–21700.

BENCH DECISION

This unfair labor practice case is prosecuted by the National Labor Relations Board's, herein "Board", General Counsel, herein "Government Counsel", acting through the Regional Director for Region 17 of the Board following an investigation by that Region's staff.

The Regional Director for Region 17 issued an Amended Complaint and Notice of Hearing, herein "Complaint", on October 8, 2002, based on an unfair labor practice charge filed on May 30, 2002, by Graphic Communications International Union, Local 16-C, herein "Union".

It is admitted the Company is a corporation with an office and place of business located in Columbia, Missouri where it is engaged in the business of printing and publishing a daily newspaper.

In conducting the business operations just described, the Company annually derives gross revenues in excess of $200,000.00 and holds membership in or subscribes to various interstate news services, including the Associated Press. Nationally sold products, such as Sprint, MCI, Nextel, AT&T Wireless, Fleet Bank, American Airlines, Sax Fifth Avenue, City Bank, Macys, and Talbots advertise in the Company's newspaper.

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During the 12-month period ending June 30, 2002, a representative period, the Company sold and shipped from its facility goods valued in excess of $50,000.00 directly to points outside the state of Missouri, and during that same time period, purchased and received at its facility goods valued in excess of $50,000.00 directly from points outside the state of Missouri.

The parties admit and I find that at all times material herein, the Company has been an employer engaged in commerce within the meaning of 2(2), (6), and (7) of the National Labor Relations Act as amended, herein "Act."

The parties admit and I find the Union is a labor organization within the meaning of Section 2(5) of the Act. The parties admit and I find Company Administrative Manager, Mary Twenter, and Company Payroll Coordinator, Gwendolyn White, are agents of the Company within the meaning of Section 2(13) of the Act.

The following employees of the Company, herein "unit", constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time press room employees, including employees engaged in the operation of all printing presses operated by the Company, at its Columbia, Missouri facility, excluding all office and clerical employees, guards, and supervisors within the meaning of the National Labor Relations Act, and all other employees.

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The Union, at all time material herein, has been designated exclusive collective bargaining representative of the unit and has been so recognized by the Company. This recognition has been embodied in successive collective bargaining agreements, the most recent of which, after extensions, expired on November 30, 2001.

Based on Section 9(a) of the Act, the Union has, at all times material herein, been the exclusive collective bargaining representative of the unit, and I so find.

It is admitted that on or about May 24, 2002, the Company denied its unit employees the use of its direct deposit system to pay their Union dues and that it has since that time refused to allow its employees to use its direct deposit system to pay their Union dues. It is likewise admitted the Company did so without notice to the Union and without affording the Union an opportunity to bargain with the Company with respect to this conduct and the effects of this conduct.

The Government alleges the use of the direct deposit system relates to wages, hours, and other terms and conditions of employment of the unit employees and as such, constitutes a mandatory subject of bargaining.

The Government alleges the Company failed and refused to bargain in good faith in violation of Section 8(a)(1) and (5) of the Act when on May 24, 2002, it unilaterally and without notice to the Union refused to allow employees to use its direct deposit system to pay their dues. The Government also alleges the Company, on or about May 24, 2002, denied the use of its direct

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deposit system to its unit employees to pay their Union dues because the unit employees joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

The Company's conduct I have just described is alleged to violation Sections 8(a)(1) and (3) of the National Labor Relations Act. The Company denies having violated the Act in any manner set forth in the Complaint.

The facts set forth herein are undisputed. The parties have for an extended number of years had a collective bargaining relationship. The most recent collective bargaining agreement between the parties expired after certain agreed upon extension on November 30, 2001. The parties most recent collective bargaining agreement contained a Union security clause and a Union dues deduction procedure. These provisions of the most recent collective bargaining agreement as set forth in Article I, Section 5 of the agreement reads as follows:

"As of the effective date of this contract, all current employees shall be sustaining members of the Union in good standing. After a 90-day period, all new employees shall become sustaining members of the Union in good standing. Full dues paying membership may be chosen by any employee, but is not required under this contract or federal law. Each year, during

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the month of August, all members of the above-described bargaining unit may resign from the Union and cancel all obligations of Union membership or support. The Company will withhold Union dues from employee paychecks upon the completion of written materials according to customary Personnel Department procedures. Employees may rescind the dues withholding upon similar written request."

The dues check off procedure was implemented in part by the Union members executing a dues check off authorization form. The authorization form reads as follows:

> "I hereby authorize Tribune Publishing Company to deduct from our wages the monthly Union dues in the amount of ____ per week to be sent to the Financial Secretary of the Kansas City Graphic Communications Union, No. 16-C, by the 15th of the following month. I understand that I may rescind the dues withholding upon similar written request."

Approximately 37 employees had executed the dues check off authorization form during the most recent collective bargaining agreement and had their Union dues deducted by that procedure. The most recent collective bargaining agreement was the first agreement between the parties to contain a dues check off provision.

Following the November 30, 2001 expiration of the parties most recent collective bargaining agreement, the Company sent all unit employees a letter dated December 19, 2001. The letter

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reads in pertinent part as follows:

> "You will notice that your paycheck is larger this time. That is because we have exercised our legal right to discontinue payroll deduction of Union dues commonly referred to as check off. Your collective bargaining agreement is expired. Let me explain a couple of things related to that. In the context of an expired collective bargaining agreement, you have the right to resign your membership in the Union and pay zero dollars to the Union. That is your right under the National Labor Relations Act. If you decide to remain a Union member, you will need to make arrangements with the Union to pay whatever money you owe."

Union Secretary-Treasurer, Roger Hall, testified that part of his duties for the Union was to collect the members' dues. Hall stated that after December 2001, he personally had to collect unit members' dues the old fashioned way by going to each member asking them for payment. Hall testified that sometime after the first of 2002, he came to the conclusion that utilization of the Company's direct deposit procedure might be an ideal way to have unit members pay their Union dues directly to the Union.

Hall, along with employee and unit member John Klund, testified they had utilized the Company's direct deposit system to pay automobile loans, personal loans, make child support payments, and establish savings and checking accounts.

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In March 2002, Union Secretary-Treasurer Hall asked Company Payroll Coordinator White about using the Company's direct deposit procedure for Union dues and asked for a direct deposit forms. Hall obtained a form and reproduced a total of approximately 37 Company direct deposit authorization forms. Hall testified he, in part, filled out the forms for the employee unit members. Hall filled in the employees' name, work department, the bank, and account number of the Union, the amount each employee was to pay, and the routing number. The unit employee members filled in their social security numbers, addresses, and executed the authorization forms. The direct deposit authorization form provides for up to four direct deposit authorizations for each employee.

Hall testified he took the executed direct deposit authorization forms for payment of dues to the Union that he had solicited from the employees and turned them into the Company. He turned in approximately 37 such forms. Hall turned in the forms in March of 2002.

Hall testified he spoke with Administrative Manager Twenter about using the direct deposit system for payment of Union dues. Hall testified Twenter said she thought it was a good idea, but pointed out that the banks might not provide the Union with

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an itemized listing of the deductions in payments. Hall testified Administrative Manager Twenter agreed the Company could provide the Union an itemized statement each time inasmuch as the Company had to make such a list for its own use.

Hall testified that the direct deposit procedure that the 37 unit employee members were utilizing is outlined in the Company's employee handbook. The procedure outlined in the employee handbook is as follows:

"All Tribune employees are encouraged to sign up for direct payroll deposit. Direct deposit allows your paycheck to be electronically deposited in your bank first thing payday morning. We have the capability to deposit in virtually any bank and up to four banks per employee. You may pay loans, deposit to savings accounts, and have your net pay deposited in your checking account. Contact the Payroll Coordinator for signup materials. Tribune Corporate bank accounts are held at Commerce Bank. As a result, discounted services may be offered by Commerce to Tribune employees. Inquire in the Personnel Office about these services.

Tribune Publishing Company is also a member of the Mizzou Credit Union. Employees may become members of the Credit Union by establishing an account at the Credit Union's main office. Direct deposit and payroll deductions for loans, savings, et cetera, are offered through the Personnel Department after an amount is established."

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Union Secretary-Treasurer Hall testified that the last pay period of April 2002, the Company did a trial run of the direct deposit for the 37 employee unit members regarding paying their dues by direct deposit to the Union.

According to Hall, the trial run went without any hitches. The first pay period in May 2002, the direct deposit for Union dues was accomplished for the 37 employee unit members so authorizing. Hall testified he received through interoffice mail an itemized statement of the deposits.

Hall testified that on May 21, 2002, Company Administrative Manager Twenter advised him the Company would no longer allow direct deposit for Union dues because dues check off had previously been discontinued by the Company and direct deposit of Union dues was a reinstatement of dues check off.

Hall asked Twenter if the Company was doing away with direct deposit for all purposes, and she responded no, that it was just being discontinued for Union dues only.

The unit Union members received with their next paycheck the following note from the Company, which was dated May 24, 2002:

> "Press Employees—Please note that the direct deposit amount for your Union dues is no longer being deducted from your check. Dues check off had been previously discontinued by the Company, and the direct deposit transactions reinstated dues check off. Establishing direct deposit for dues was a mistake.
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>
> We are sorry for inconvenience that this may cause you."

Hall testified and the Company admits it did not negotiate with the Union regarding its decision to stop allowing its direct deposit procedure to be utilized for the payment of Union dues.

The Company has maintained a direct deposit procedure since 1993. The time in the spring of 2002 was the only time employee unit members utilized the Company's direct deposit procedure for the payment of Union dues.

Hall testified that prior to the most recently expired collective bargaining agreement, the Union collected dues the old fashioned way, namely by a Union official going to each unit member and requesting payment of Union dues.

Company Administrative Manager Twenter testified banks charged the Company ten cents for each direct deposit transaction each time one was made. Twenter stated, however, that the Company did not cancel direct deposit for Union dues because of the cost associated therewith. Twenter testified the Company employee handbook had been in existence for many, perhaps 16 years, and its terms were not negotiated with the Union.

The parties' positions may be summarized as

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follows:

First, the Government acknowledges that the Board in *Hacienda Resort Hotel and Casino*, 331 NLRB 665 (2000), held that an employer's obligation to check off Union dues terminates on contract expiration.

The Government, however, asserts that the Board did not address, nor did it find, that direct deposit systems are equivalent to dues check off even where an employer's direct deposit procedure is utilized for the payment of Union dues.

The Government argues direct deposit of Union dues is not tantamount to a continuation of dues check off under the expired collective bargaining agreement. The Government asserts dues check off is clearly distinguishable from direct deposit. The Government notes that the Union could enforce contractually agreed upon dues check off by a Section 301 suit or by the filing of Board charges.

The Government asserts that the direct deposit procedure does not involve the Union and adds the Union could not compel its enforcement. The Government notes that an employee might even prefer direct deposit over dues check off for the payment of Union dues.

The Government argues that *Hacienda* is not applicable, nor is it controlling in the instant case. The Government asserts the Company allows use of its direct deposit procedure for any and all purposes except Union dues.

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The Government asserts such establishes a clear case of disparate treatment with respect to Union dues and constitutes a violation of Section 8(a)(3) and (1) of the Act. The Government also asserts that direct deposit procedures is a mandatory subject of bargaining and that when the Company discontinued allowing direct deposit for Union dues without prior notice to or bargaining about the decision and its effects, the Company violated Section 8(a)(5) and (1) of the Act by making unilateral changes.

The Government relies on *Farmers Cooperative Gin Assn.,* 161 NLRB 887 (1996), for the proposition that it is unlawfully discriminatory for a employer to discontinue or not agree to direct deposit where it otherwise allows payroll deductions for assorted other reasons such as bank loans, car payments, and the like. The Government relies on *King Radio Corp.,* 166 NLRB 649, for the proposition that payroll deductions consti-

tute mandatory subjects of bargaining and that a unilateral change in such would constitute a violation of Section 8(a)(5) and (1) of the Act.

The Company's position is straightforward and clear. The Company contends the outcome of the instant case is determined and controlled by the Board's holding in *Hacienda Resort Hotel & Casino*. The Company notes the Board has created and since 1962, consistently enforced a bright line rule that an employer is no longer required to continue to check off Union dues after

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the collective bargaining agreement giving rise to the dues check off obligation expires.

The Company argues the Government and the Union are simply trying to make a distinction without a difference between traditional dues check off and direct deposit of Union dues through an employer provided and funded system in order to get past bright line Board law that permits employers to eliminate dues check off after a collective bargaining agreement expires. The Company takes the position that regardless of the method by which an employer goes about deducting dues and remitting them to the Union, be it by direct deposit system, an hand tallied spread sheet, or a physical deduction of cash from a cash payment followed by a walk down to the Union's headquarters to make the fund transfer, each and every system of mandatory Union dues deductions has the forbidden effect of forcing the employer, such as the Company herein, to spend its resources to deduct Union dues from employee paychecks after the collective bargaining agreement expires.

The Company contends there is nothing in its direct deposit policy statement that creates a right to have Union dues deducted, and it may not be compelled to do so after the expiration of a party's collective bargaining agreement.

The Company contends it is irrelevant that it provides at its own expense a system through which employees may directly deposit a portion of their respective paychecks into a number of

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non-Union accounts. The Company contends there is nothing in the Board's rulings in *Hacienda* or *Bethlehem Steel*, 136 NLRB 1500 (1962), that makes an employer's right to discontinue dues check off after the collective bargaining agreement expires contingent upon the employer's willingness to abstain from making voluntary deductions from its employees paychecks at the employer's expense for non-Union related reasons.

The Company contends that even if a disparate treatment consideration is applied to its direct deposit procedure regarding Union dues, the Government has failed to establish that it treated the Union any different than it treated other similarly situated outside organizations.

The Company contends the record is devoid of any evidence that the Company allowed similar outside organizations to use its direct deposit system in a similar way for similar purposes to support a collective bargaining representative.

It is clear from the Board's holding in *Hacienda Resort & Hotel Casino*, 331 NLRB 665 (2000), that an employer's obligation to continue a dues check off arrangement expires with the contract that created the obligation. The Board made it clear that the principle applies with or without a Union security clause.

The Board in *Hacienda* traced the origin of its stated principle from *Bethlehem Steel*, 136 NLRB 1500 (1962), to the present and concluded the principle was long established, well

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settled, and practitioners had come to rely on the principle that dues check off expires with the collective bargaining agreement that gives rise to it.

The question herein, however, is whether utilization by the unit Union members of the Company's direct deposit procedure is simply a subterfuge or an attempt to get around the Board's *Hacienda* principle or is it something entirely different.

I might add at this point that I'm not unmindful of the United States Court of Appeals for the 9th Circuit's decision in *Local Joint Executive Board of Las Vegas v. NLRB*, 49 F.3d 317 (2002), in which the Circuit Court vacated and remanded *Hacienda* to the Board for the Board to articulate its rationale for excluding dues check off from the unilateral change doctrine in the absence of a Union security clause.

I'm persuaded, however, that *Hacienda* is applicable as it applies to me. I am fully persuaded that the Company's direct deposit procedure is separate and entirely different from the contractual dues deduction procedure of the parties' most recently expired collective bargaining agreement.

The Company's direct deposit procedure has been in effect for any and all purposes since its inception in 1993. The Company, in its handbook, invites employees to use its direct deposit procedure for up to four separate direct deposit payroll deductions, for "loans, savings, et cetera". It is established that the procedure has been used to pay personal

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loans, car loans, child support payments, and the like.

The direct deposit procedure is strictly between the Company and its employees without the involvement of the Union. The Company encourages the use of its direct deposit procedure. The Union is not involved with the direct deposit procedure, nor can it enforce the procedures authorized between the employees and the Company, whereas with Union dues deductions, in the collective bargaining agreement, the Union could enforce those provisions. In fact, employees might choose the Company's direct deposit procedure over any collective bargaining agreed upon dues deduction procedure.

Having concluded that the Company's direct deposit procedure is separate and apart from any collective bargaining procedure providing for dues deductions, I turn to whether there was unlawful disparate treatment by the Company when it discontinued direct deposit for payment of Union dues.

I note there is obviously no requirement that the Company even have a direct deposit procedure. But if it does have one, it must not administer it in a manner that unlawfully discriminates against Union activities.

There is no room on this record for any doubt on the issue of disparate treatment in that the Company ceased allowing direct

deposit for payment of Union dues while allowing its direct deposit procedures to be utilized for any and all other types of direct deposits with up to four for each employee.

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It is clear that direct deposit payroll deductions constitute working conditions of the unit employees. In simple language, the Company said to its unit employees you may utilize our direct deposit procedure for various purposes, including up to four such purposes, but you are prohibited from making use of it for one reason only, namely, the remittance of Union dues to the Union. I'm fully persuaded that such constitutes unlawful disparate treatment of the employees' Union activities, and as such, violates Section 8(a)(3) and (1) of the Act, and I so find.

I reject the Company's contention that the Government failed to show it treated similarly situated users of its direct deposit procedure differently than it treated its employees' authorizations for dues deductions herein.

In my opinion, there is no need for a comparison when the Company disallows the use of its direct deposit procedure only when it pertains to the direct deposit by its employees of their Union dues. I likewise reject the cost factor raised by the Company as a consideration. Administrative Manager Twenter clearly testified that cost was not a factor in the Company's decision to disallow the use of its direct deposit system for the payment of Union dues.

I also find that when the Company changed the working conditions of its employees by ceasing to allow them to directly deposit their Union dues without affording the Union an

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opportunity to bargain about that conduct or its effects, the Company violated Section 8(a)(5) and (1) of the Act, and I so find.

I shall order that the Company administer its direct deposit procedure in a nondiscriminatory manner and that it allow its employees the use of its direct deposit procedure to pay their Union dues. I also direct that the Company upon request of the Union to bargain in good faith before any changes are effected with regard to employees paying their Union dues by the Company's direct deposit procedure. I shall also direct that the Company post an appropriate notice to its employees regarding its unfair labor practices and its obligation to remedy its unfair labor practices

The Court Reporter should provide to me within ten days of the close of this trial a copy of the transcript of this proceeding. Once I have received a copy of the transcript, I will, if necessary, make corrections thereon, and if deemed appropriate, extensions thereto, and I will certify that to the Board as my decision in this matter.

The rules for taking exceptions or appeals to any Board decision including bench decisions is outlined in the Board's rules and regulations.

Let me state in closing that it has been a pleasure to be in Columbia, Missouri, and this trial is closed.

(Whereupon, the hearing in the above-mentioned matter was

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closed.)