Mode O'Day Company, Division of Wickes Companies, Inc. *and* **Joanne D. Suffredini** *and* **General Warehousemen's Union, Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Party to the Contract.** Case 31-CA-15199

6 June 1986

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JOHANSEN AND STEPHENS

On 12 February 1986 Administrative Law Judge Earldean V. S. Robbins issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in reply to the Respondent's exceptions.

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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Mode O'Day Company, Division of Wickes Companies, Inc., Burbank, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(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. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT contribute support or assistance to General Warehousemen's Union, Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other local organization, by encouraging or requiring newly hired employees to sign dues-checkoff authorizations in favor of that Union as part of our employment procedures.

WE WILL NOT deduct from the wages of our employees union initiation fees and dues in favor of the Union, or any other union, pursuant to any authorization not freely and voluntarily given by the employee in favor of 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 reimburse Joanne D. Suffredini, with interest, for the moneys deducted from her wages pursuant to an unlawfully obtained union dues-checkoff authorization.

MODE O'DAY COMPANY, DIVISION OF WICKES COMPANIES, INC.

Alice Joyce Garfield, Esq., for the General Counsel.
Phillip Pearson and *Robert J. Quigly, Esqs.*, of Santa Monica, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge. This matter was heard before me in Los Angeles, Cali-

[1] The administrative law judge failed to address the issue of whether the Respondent's conduct violated Sec 8(a)(3) as alleged In the absence of exceptions we find it unnecessary to pass on the issue

We note two errors in sec. III of the judge's decision (1) In the third sentence of par 5 the judge mistakenly refers to Higginbotham rather than Suffredini, and (2) in the first sentence of par 6 the correct date is 24 July rather than 4 July.

The judge neglected to provide in "The Remedy" for the manner in which interest is to be computed on the moneys to be reimbursed to the Charging Party. Interest on such moneys is to be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977) See *Seafarers Great Lakes District*, 138 NLRB 1142 (1962).

[2] The judge recommended that the Board issue a broad cease-and-desist order requiring that the Respondent cease and desist from violating the Act "in any other manner" However, a broad cease-and-desist order is warranted only where it is shown that a respondent has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employees' fundamental statutory rights We do not find that the Respondent in this case has engaged in such conduct Accordingly we shall substitute narrow language, requiring the Respondent to cease and desist from violating the Act "in any like or related manner" See *Hickmott Foods*, 242 NLRB 1357 (1979)

fornia, on 20 November 1985. The original charge was filed by Joanne D. Suffredini, an individual, on 2 August 1985, and a copy thereof was served on Mode O'Day Company, Division of Wickes Companies, Inc. (Respondent) on 7 August 1985. The amended complaint, which issued on 1 November 1985, alleges that Respondent violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act (the Act). The basic issue is whether Respondent gave unlawful aid, assistance, and support to General Warehousemen's Union, Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union) by instructing Suffredini to sign a union dues-checkoff authorization card on her first day of employment and by subsequently deducting moneys for union initiation fees from Suffredini's wages pursuant to the dues-checkoff authorization form and remitting the moneys to the Union.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a Delaware corporation with an office and principal place of business located in Burbank, California, has been engaged in manufacturing and supplying women's clothing to Respondent-owned and franchised stores located throughout the United States. Respondent, in the course and conduct of its business operations, annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of California and annually purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

The complaint alleges, Respondent admits, and I find that Respondent is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent and the Union are parties to a collective-bargaining agreement which requires that new employees shall make an application and become members of the Union within 31 days after commencing their employment.[1] The agreement further provides that Respondent agrees to deduct from the pay of unit employees who furnish to it a written authorization, the dues, initiation fees, and/or uniform assessments of the Union and to remit such deductions to the Union.[2]

Suffredini was hired by Respondent as a retail secretary, a classification covered by the collective-bargaining agreement, on 17 June 1985,[3] and on that same day signed a checkoff authorization and assignment form irrevocable for 1 year or until the termination of the collective-bargaining agreement, whichever occurs first, which authorized Respondent to deduct from her wages all initiation, reinitiation, or restatement fees; membership dues; and uniform assessments required by the Union. Thereafter, pursuant to such authorization, Respondent deducted $25 for her union initiation fee from Suffredini's paycheck commencing with the pay period ending 22 June and continuing through the pay period ending 20 July 1985. Suffredini tendered her resignation on 24 July and left Respondent's employ on 2 August.

The complaint alleges that Suffredini did not sign the union dues-checkoff authorization form voluntarily. In support thereof, Suffredini testified that on her first day of employment she reported to Sarah Higginbotham, a Human Resources assistant with Respondent, at which time Higginbotham gave her some papers to sign, including an income tax withholding form, a list of Respondent's rules and regulations, a union dues-checkoff authorization form, and a printed condition of employment form which set forth the requirement that each new employee is required to join the Union within 30 days after the date of first employment. When given to Suffredini, the condition of employment statement was predated, 17 June and the checkoff authorization form was completely filled out with Suffredini's name, social security number, address, the terms of the initiation fee deduction, and the date, 17 June 1985.

Suffredini testified that when Higginbotham handed her the checkoff authorization form, Higginbotham told her that nothing would be deducted from her pay for the first 30 days, and that thereafter $200 in initiation fees would be deducted at a rate of $25 a week and that, once she was accepted into membership by the Union, deduction of union dues would commence. Suffredini admits that Higginbotham did not say when she had to sign the union dues authorization form. However, when Higginbotham gave her the form she began to read it and, as she was reading it, Higginbotham said nothing would be withheld for 30 days. She therefore assumed that it was all right to sign the form then and that she was expected to do so.

Suffredini further testified that shortly after she received her first check she went to Higginbotham's office on two occasions to inquire regarding the deduction for the union initiation fee. Each time Higginbotham's door was closed so Suffredini assumed she was busy. On 21 June Higginbotham mentioned to her supervisor and another secretary that union dues had been deducted from her pay and that she was concerned about it. The secretary said that had been done to everyone and there was not a thing Suffredini could do about it. Her supervisor said she felt Suffredini was on probation and the Union was also, but she did not know enough about it to comment further. Thereafter Suffredini did nothing about the

[1] Art. 1, sec. B.
[2] Art. 1, sec. D.
[3] Unless otherwise indicated all dates will be in 1985.

deductions until 24 July when she gave Higginbotham notice that she was leaving Respondent's employ. According to her, she did not feel it was urgent because Higginbotham had told her nothing would be deducted for 30 days and she was sure the matter would be corrected once she spoke to Higginbotham.

Suffredini testified that on 4 July she told Higginbotham she was concerned about the deductions that had been made thus far. Higginbotham said she would call accounting and did so while Suffredini waited. After she concluded the call, she told Suffredini that none of the money deducted from her paycheck would be returned to her. Suffredini further testified that she had another conversation with Higginbotham on 26 July. At that time she told Higginbotham that because she was leaving she would appreciate it if they would stop the deductions. Higginbotham said no further deductions would be made.

Suffredini again said she was also concerned about the money that had been withheld thus far, that she had contacted the National Labor Relations Board and had been told the deductions were unlawful. Higginbotham asked when the deductions commenced. Suffredini said, "Since day one." Higginbotham said, "Well, they shouldn't have withdrawn for 30 days." She then said she would make some phone calls and get back to Suffredini. At some point Higginbotham referred Suffredini to Union Representative Tom Lauer. On 2 August during her exit interview, Suffredini again told Higginbotham she was concerned that the deductions had not been returned to her. At that time, according to Suffredini, Higginbotham advised her to go ahead with the National Labor Relations Board and do whatever she had to do to get her money back.

Higginbotham denies that she told Suffredini nothing would be deducted from her pay for union dues or initiation fees for the first 30 days. According to her, she did tell Suffredini that she had to join a union but did not tell her when she had to join. Suffredini signed the checkoff authorization form but asked no questions regarding it nor made any objections to it.

It is well established that an employer violates Section 8(a)(2) and (1) of the Act by deducting union dues from an employee's wages absent a valid authorization from the employee. *General Instrument Corp.*, 262 NLRB 1178 (1982). The General Counsel contends that Suffredini's union dues-checkoff authorization was not valid because it was not voluntarily executed. Respondent argues that the checkoff authorization was voluntarily executed because she was not told when to sign the card and signed it without objection.

I reject Respondent's argument. The inclusion of a checkoff authorization among the forms furnished employees during the hiring process may justify a finding that the employees were led to believe that the execution of such authorization was a condition of employment. *Campbell Soup Co.*, 152 NLRB 1645 (1965); *Western Building Maintenance Co.*, 162 NLRB 778 (1967); *Scottex Corp.*, 200 NLRB 446 (1972). Here Higginbotham gave Suffredini an authorization form which had already been filled in, along with other forms she was required to sign. In these circumstances it was reasonable for Suffredini to assume that she was required to sign the authorization form and because it was predated for that day, that she was required to sign it then. Also, by assuring her that no moneys would be deducted for 30 days[4] Higginbotham further encouraged Suffredini to sign the form immediately. In the circumstances, I find that her execution of the union dues authorization form was not a voluntary authorization. Accordingly, I find that by requiring Suffredini to sign a union dues-checkoff authorization form at the time of her hire and deducting union initiation fees from her wages pursuant to such authorization, Respondent has violated Section 8(a)(1) and (2) of the Act.

I also reject Respondent's contention that no remedy is required because Suffredini worked in excess of 30 days and thus was obligated to pay the initiation fee. Suffredini had no obligation to pay any union fees or dues during the first 30 days of her employment unless she voluntarily executed a checkoff authorization. Becaue I have found that, under the circumstances, a checkoff authorization was not voluntarily executed by Suffredini, any sums deducted from her pay during the first 30 days of her employment must be reimbursed. *General Instrument Corp.*, supra.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2) of the Act, engaged in commerce or a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By requiring Suffredini to sign a union dues-checkoff authorization form at the time of her hire, and thereafter deducting moneys for union initiation fees from her wages pursuant to such authorization, Respondent has committed unfair labor practices in violation of Section 8(a)(1) and (2) of the Act.

4. The above-described unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that Respondent cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Because it has been found that Respondent has unlawfully contributed support and assistance to the Union by requiring Suffredini to sign a union dues-checkoff authorization form and thereafter deducting from her wages money for union initiation fees, I shall recommend that Respondent reimburse Suffredini, with interest, for all moneys deducted from her wages pursuant to such authorization. Because Suffredini is no longer in Respondent's employ, it is unnecessary to recommend that the checkoff authorization shall not be honored in the future.

[4] I credit Suffredini in this regard.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Mode O'Day Company, Division of Wickes Companies, Inc., Burbank, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Distributing filled-in and dated checkoff authorization forms in favor of the Union to employees as part of its hiring process and deducting money from employees' wages pursuant to authorizations so obtained.

(b) In any other manner interfering with, restraining, or coercing its 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) Reimburse Suffredini, with interest, for the moneys deducted from her wages pursuant to the unlawfully obtained union dues-checkoff authorization.

(b) Post at Burbank, California facility copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If no exceptions are filed as provided by Sec 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] 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."