

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

Advice Memorandum

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DATE: December 22, 2009

TO : Frederick Calatrello, Regional Director
Region 8

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

530-6067-4033-8600

SUBJECT: Aramark @ Cuyahoga Community College
Case 8-CA-38478

The Region submitted this case to determine whether the Employer unlawfully failed to remit dues to the Charging Party because some of the dues authorization cards name another labor organization. We conclude that the Employer violated Section 8(a)(5) by unilaterally ceasing to remit checked-off dues to Charging Party.

FACTS

Respondent Aramark @ Cuyahoga Community College employees a unit of food service employees at the college located in Cleveland, Ohio. For many years, unit employees had been represented by HERE Local 10, and subsequently by UNITE HERE Local 10, after the merger of the two international unions. Since the merger, Local 10 has transferred Section 9(a) representative functions to the Charging Party, the Chicago and Midwest Regional Joint Board ("Joint Board"), which had previously served as an intermediate body that organized, coordinated, and supervised the activities of their affiliated Locals. Consequently, the current 2007-10 agreement names for the first time the union as the Joint Board, rather than Local 10. The Region has concluded that the Joint Board was, and since disaffiliation from UNITE HERE, continues to be the employees' collective bargaining representative.

The Employer distributed union dues check-off authorization cards to employees naming Local 10 as the recipient union both before and during the term of the current contract. However, it has also begun to distribute cards naming the Joint Board as dues recipient to some employees during the current contract term. Both the Local 10 and Joint Board cards refer, among other things, to the

collective bargaining agreement between the Employer and the union named on the card, without regard to whether such an agreement currently exists. Prior to Local 10's affiliation with the Joint Board, the Employer had sent dues collected under the check-off cards to Local 10. Subsequently, the Employer had remitted dues to the Joint Board instead.

In March, 2009, the Joint Board and affiliated Locals, including Local 10, disaffiliated from UNITE HERE. Numerous disaffiliated Joint Boards and Local Unions subsequently joined together to form Workers United, which in turn affiliated with the SEIU. UNITE HERE, however, disputes the disaffiliations. As a result, both UNITE HERE and the Joint Board has demanded that the Employer remit dues to their organization. Since April, the Respondent has escrowed all dues rather than remit them to one party or the other.

ACTION

We conclude that the Employer violated Section 8(a)(5) by unilaterally ceasing to remit checked-off dues to the Joint Board.

A dues checkoff authorization is a contract between an employee and his or her employer.¹ In interpreting a contract such as an authorization card, if there is any ambiguity in contract terms, the Board will examine extrinsic evidence to determine the parties' intent.² Relevant extrinsic evidence includes "a past practice of the parties in regard to the effectuation or implementation of the contract provision in question"³

¹ Electrical Workers IBEW Local 2088 (Lockheed Space Operations), 302 NLRB 322, 327 (1991) (holding union violated Section 8(b)(1)(A) by continuing to accept checked-off dues after employee resigned from union membership).

² See Des Moines Register and Tribune Co., 339 NLRB 1035, 1037 (2003), review denied sub nom. Des Moines Mailers Union, Teamsters Local 358 v. NLRB, 381 F.3d 767 (8th Cir. 2004).

³ Mining Specialists, 314 NLRB 268, 269 (1994).

Here, on their face, the cards naming Local 10 as recipient of the dues are ambiguous. In describing the duration of the authorization, the cards refer to a collective-bargaining agreement between Local 10 and the Employer. There is no such agreement. Although earlier collective-bargaining agreements have defined the union as HERE Local 10 and, later as UNITE HERE Local 10, the Local has more recently assigned its representative functions to the Joint Board.⁴ Thus, the current agreement identifies the Joint Board as the Union representing employees; the contract does not name Local 10.

In light of this facial ambiguity, we examine extrinsic evidence, which indicates that parties to checkoff authorization intended dues to be remitted to the Joint Board, as the current collective bargaining representative. While Local 10 previously received dues, since 2007, the Employer has forwarded dues to the Joint Board as signatory to the current collective bargaining agreement. Thus, over time, the Employer has consistently remitted dues to the employees' current collective bargaining representative, without apparent complaint from any employee. There is no evidence that the Employer presently distributes authorization cards naming Local 10 to employees because they wish to remit dues to that organization. Rather, the Employer's distribution of Local 10 and/or Joint Board cards appears to be indiscriminate.

⁴ The Region has concluded that, by 2007, Local 10 had delegated its Section 9(a) responsibilities to the Joint Board, which remains the Section 9(a) representative today. The Employer's failure to timely challenge that transfer of representative status precludes it from doing so now, well outside the Section 10(b) period. See Machinists Local Lodge 1424 v. NLRB (Bryan Mfg. Co.), 362 U.S. 411, 416-17, 419 (1960) (finding employer's 8(b)(1)(A) allegation time-barred under Section 10(b) because entire basis for allegation was union's lack of majority status when original contract was signed outside 10(b) period); Raymond F. Kravis Center for the Performing Arts, 351 NLRB 143, 144 & nn.8, 9 (2007), enfd. 550 F.3d 1183 (D.C. Cir. 2008).

Accordingly, the Employer's failure to send employees' dues to the Joint Board violated Section 8(a)(5).

/s/
B.J.K.