

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

Advice Memorandum

DATE: February 24, 2000

TO : Frederick J. Calatrello, Acting Regional Director
Region 26

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

SUBJECT: Bakery, Confectionary & Tobacco Workers Union, Local 149 (Earth Grains of Memphis)
Case 26-CB-3843

536-2581-3356
536-2581-6701

This case was submitted for advice as to whether the Union's failure to advise the Charging Party that her dues revocation was premature constituted a breach of its duty of fair representation.

FACTS

The Union and Employer are parties to a collective-bargaining agreement which provides for checkoff of union dues once a month. The checkoff authorization cards state that dues are not a quid pro quo for Union membership. The cards provide for revocation only during the "14 day period prior to the anniversary date or termination date of the current or any subsequent Collective-Bargaining Agreement."

Charging Party Starks executed a dues authorization card on September 4, 1998. Starks was then absent from work for an extended period of time in sick leave status. Upon her return to employment in July 1999, dues were deducted from her initial paycheck.

Shortly after receiving that paycheck, Starks contacted the Employer's Human Resources Director and inquired about having her dues stopped since she had not converted from part-time to full-time status as she had anticipated. The Human Resources Director gave her a copy of her dues authorization form and advised her to contact the Union concerning revocation.

On July 16, Starks went to the Union office and spoke with International Representative James Rivers. Starks told Rivers she wanted to resign her membership in the Union and to stop dues checkoff, and gave Rivers a handwritten note to that effect. Starks has testified that Rivers responded that he would see to it that dues were no longer remitted from Starks' paychecks. Rivers denies

making that comment, and states that he only told Starks he would check into the matter for her.

No dues were deducted from Starks' August paycheck. However, Starks' check of September 2 reflected a dues deduction. Starks has stated that she was surprised by this deduction and immediately attempted to contact Rivers but was unable to reach him despite several tries. On September 9, an amount of two months' dues was deducted from her paycheck. She inquired about that deduction and, in Rivers' absence, a Union secretary said something about back dues.¹ The Employer has informed the Region that the gap in dues deductions in August was due to a transfer from a manual to computerized payroll system, and that the Union had no involvement in the timing of Starks' deductions.

[FOIA Exemptions 6, 7(C), and 7(D)] the Union uses the following procedure in handling checkoff revocations: if they are timely, the Union notifies the Employer to cease deductions; if they are untimely, as in Starks' case, the Union takes no action whatsoever.² With regard to employee attempts to resign Union membership, the Union's stated procedure is that it first calls the employee and attempts to persuade him not to resign and, if unsuccessful, honors the resignation. In Starks' case, the Union failed to respond in any manner to her request to resign. In January 2000, after the Region pointed out to Rivers that the Union had not taken any action on that request, the Union sent Starks a letter notifying her that her resignation had been accepted but that her revocation would not be honored.

ACTION

We conclude that the Union violated Section 8(b)(1)(A) by failing to notify Starks that her revocation could not be honored because it was premature.³

¹ It appears that Starks should have owed, at most, only one month in back dues, and it is not clear why she was charged for an extra month's dues.

² [FOIA Exemptions 6, 7(C), and 7(D)] employees are free to revoke checkoff authorizations after expiration of a contract.

³ As the Region notes, the Union also violated Section 8(b)(1)(A) by not responding to and honoring Starks' attempt to resign her Union membership. See UAW Local 449 (National Metalcrafters), 283 NLRB 182 (1987), enfd. 865

A union that is the exclusive representative of bargaining unit employees is obligated to serve the interests of all the employees without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.⁴ A union violates its duty of fair representation if its actions are arbitrary, discriminatory, or taken in bad faith. The union's duty to avoid arbitrary conduct means "at least that there be a reason for action taken."⁵

The Board consistently has found that a union may lawfully refuse to honor an untimely attempt to revoke a checkoff authorization outside a specified window period.⁶ However, under general DFR principles, a union may not fail to notify an employee that her checkoff revocation is premature, thereby depriving her of a chance to re-file during the correct window period, in circumstances where the union has provided no reason for its actions and they are therefore arbitrary or in bad faith.⁷

Here, upon being handed Starks' premature checkoff revocation, Rivers at the very least admittedly told Starks

F.2d 791 (6th Cir. 1989). The complaint should allege that violation as well.

⁴ Vaca v. Sipes, 386 U.S. 171, 177 (1967).

⁵ Teamsters Local 315 (Rhodes & Jamieson), 217 NLRB 616, 618 (1975), enfd. 545 F.2d 1173 (9th Cir. 1976).

⁶ American Telephone & Telegraph Co., 303 NLRB 942 (1991); Steelworkers Local 4671 (National Oil Well), 302 NLRB 367 (1991); Postal Service, 302 NLRB 332 (1991).

⁷ See Teamsters Local 315 (Rhodes & Jamieson), 217 NLRB at 618 ("[I]f a duty to avoid arbitrary conduct, as part of an affirmative, fiduciary responsibility, means anything, it must mean at least that there be a reason for action taken."). Compare American Postal Workers Union (U.S.P.S.), 8-CB-8487(P), Advice Memorandum dated March 31, 1998 (no violation where union processed charging party's premature revocation request through its normal channels, which took ten days, and as a result did not notify him that his request was untimely until the day the window period closed).

that he would check into the matter for her.⁸ Rivers' comment implied that he would get back to Starks and let her know whether her checkoff could be revoked in this manner. Rivers never informed Starks that the revocation was premature, and did not return her phone calls when she tried to contact him again during the window period. The Union has presented no reason for its failure to tell Starks that her checkoff revocation was premature other than to state that, as a matter of procedure, it generally takes no action whatsoever when it receives an untimely request. However, Rivers did not take "no action," but rather informed Starks that he would check into the matter and, in essence, that he would get back to her. Having undertaken to do so, the Union acted arbitrarily and in bad faith when it failed to inform her, for no apparent reason, that her request was untimely.⁹

We further note that there is no evidence that the Charging Party knew the precise boundaries of her window period, or that she reasonably should have known that her revocation was unacceptably premature absent notification by the Union to that effect.¹⁰ The checkoff authorization

⁸ If Starks' version of events is credited, Rivers agreed to accept the revocation. Under that scenario, the Union clearly breached its duty of fair representation by misleading Starks into believing she had successfully revoked her checkoff when she had not. Cf. Groves-Granite, 229 NLRB 56, 63 (1977) (a union may not purposely keep employees uninformed or misinformed concerning their grievances).

⁹ See Union of Security Personnel of Hospitals (Church Charity Foundation), 267 NLRB 974, 980 (1983) (a union has broad discretion in grievance handling, but once it undertakes to process a grievance, it must do so in conformance with its duty of fair representation; if a union undertakes to process a grievance and then for no reason fails to do so, its conduct "amount[s] to a willful failure to pursue the grievance, and [is] therefore perfunctory."); Service Employees Local 3036 (Linden Maintenance), 280 NLRB 995, 996-997 (1986) (union conduct was arbitrary and perfunctory and thus a breach of its duty when it advanced no reasons for inaction after it committed to processing a grievance).

¹⁰ Compare American Postal Workers Union (U.S.P.S.), 8-CB-8487(P), Advice Memorandum dated March 31, 1998 (the

card she signed provided for a 14-day window period prior to the "anniversary date or termination date of the current or any subsequent Collective Bargaining Agreement." It is not clear from this language that "anniversary date" relates to the date the authorization card was signed rather than to the date the contract was signed.¹¹ Furthermore, Starks reasonably assumed that her revocation had been accepted, and reasonably failed to investigate further regarding the window period, when no dues were deducted from her August paycheck. That action, for which the Union concededly was not responsible, nevertheless rendered Starks even more dependent on the Union's fulfillment of its fiduciary obligation not to mislead her and not to engage in perfunctory and arbitrary handling of her request.

Accordingly, the Region should issue an 8(b)(1)(A) complaint, absent settlement.

B.J.K.

charging party had written his correct window period dates at the top of his revocation form, and knew that the union had received the form by certified mail on a date several days before the commencement of that window period).

¹¹ [FOIA Exemptions 6, 7(C), and 7(D)] that employees are free to revoke checkoff authorizations during a contract hiatus further illustrates the lack of clarity regarding Union practice, since no such additional window period appears on the checkoff authorization forms.