

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

Advice Memorandum

DATE: March 10, 1998

TO : Dorothy L. Moore-Duncan, Regional Director
Region 4

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

SUBJECT: International Brotherhood of Teamsters (UPS)
Cases 4-CB-7972-1, 4-CB-7973-1, 4-CB-7983-1
and 4-CB-7984-1

8350

524-5090-

Teamsters, Local 384 (UPS)

0150

536-2573

536-5050-

0137

Cases 4-CB-7972-2, 4-CB-7973-2, 4-CB-7983-2

536-5075-

2700

and 4-CB-7984-2

650-8822-

2700

650-9922-

United Parcel Service
Cases 4-CA-25619 and 4-CA-25625

These cases were submitted for advice regarding, *inter alia*, (1) whether the Union violated Section 8(b)(1)(A) by fining members who crossed a picket line in violation of the Union constitution, where those members had never received notice of their Beck¹ and GM² rights in circumstances where the collective-bargaining agreement contained a "members in good standing" union-security clause;³ and (2) whether the Union violated Section 8(b)(1)(A) and the Employer violated Section 8(a)(3) by failing to terminate dues checkoff following employees' attempted revocation of checkoff authorization.

FACTS

¹ Communications Workers v. Beck, 487 U.S. 735 (1988).

² NLRB v. General Motors Corp., 373 U.S. 734 (1963).

³ The Charging Parties do not allege that the union-security clause is unlawful on its face.

The United Parcel Service ("Employer") is a package delivery company. The Employer's facility in Willow Grove, Pennsylvania is represented by Teamsters, Local 384 ("Union"), which is affiliated with the International Brotherhood of Teamsters ("International"). The Union and Employer entered into a collective bargaining agreement which expired July 31, 1997 ("Contract").

The union-security clause contained in the Contract required Union membership in good standing as a condition of employment.⁴ However, the Contract did not define membership, did not indicate that full Union membership is not required, and did not indicate that an employee may satisfy this obligation by paying representational fees. There is also no evidence that the Union notified employees of their right to be a nonmember, or of their right to pay only representational dues and fees.

From August 4 through August 20, 1997,⁵ following expiration of the Contract, the Union joined other Teamsters locals in a strike against UPS. During the strike, four Union members at the Willow Grove facility crossed the picket line and returned to work without attempting to resign their Union membership: John Allen ("Allen"), Elizabeth Gramlich ("Gramlich"), Dorothy Tercha ("Tercha"), and Richard Vogt ("Vogt") (collectively "Charging Parties").

After returning to work during the strike, three of the Charging Parties contacted the National Right to Work Foundation and learned of their right to resign from Union membership and to object to nonrepresentational Union dues. Allen's supervisor during the strike informed him that he could resign from the Union. Each Charging Party then

⁴ Article 3, Section 1 of the Contract requires that all present employees who are Union members "remain members of the Local Union in good standing as a condition of employment" and that all present nonmember employees and new hires "become and remain members in good standing of the Local Union as a condition of employment" within 31 days of the Contract or hire date.

⁵ All dates refer to 1997 unless otherwise noted.

mailed the Union a letter resigning Union membership. In their letters, all the Charging Parties except Allen also objected to the use of their Union dues and fees for activities unrelated to representation.

On August 18, the Union sent each Charging Party a letter informing them that they were charged with violating Article XIX, Section 7(b)(7) and Section 8 of the Constitution of the International Brotherhood of Teamsters ("Union Constitution"), which prohibits:

Crossing an authorized picket line established by the member's Local Union or any other subordinate body affiliated with the International Union
[and]

. . .

knowingly [going] to work or remain[ing] in the employment of any person, firm or corporation, whose employees are on strike or locked out, unless he has permission of the [Union]. . . .

The Union's letters informed them that a hearing on the charges would be held on October 8. None of the Charging Parties attended the hearing. On October 27, the Union informed the Charging Parties that they had been found guilty of violating the Constitution and were being fined for each day they worked during the strike prior to their resignation. None of the Charging Parties appealed the Union's disciplinary actions,⁶ but the Union has not attempted to collect the fines.

None of the Charging Parties ever received a copy of the Union Constitution or By-Laws, nor were they informed of the Constitution's provisions prohibiting Union members from crossing the picket line. Likewise, none of the Charging Parties except for Allen received a copy of the Contract.⁷

⁶ The Union Constitution requires all appeals to be mailed within 15 days of the decision. Art. XIX, Section 2(a).

⁷ Allen, a former Assistant Shop Steward and unsuccessful candidate for Local Trustee, states that he assumed the Contract's union-security clause "meant what it said," that

After she was charged, Gramlich requested a copy of the Union Constitution and By-Laws, and was told by the Union that copies were available for review at the Union hall.

In addition to resigning, three of the Charging Parties also revoked their dues checkoff: Gramlich on September 29, Tercha on August 22, and Vogt on August 19. The dues checkoff authorization form used by the Union for the past 26 years reads as follows:

I, [name of employee] hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union 384, and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization is voluntary and is not conditioned on my present or future membership in the Union.

This authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

Neither the Union nor the Employer can produce the signed dues checkoff authorizations of Gramlich, Tercha and Vogt. Although Gramlich, Tercha, and Vogt do not recall signing a dues checkoff authorization,⁸ they have not

he was required to be a Union member in order retain his job with the Employer.

⁸ Vogt and Gramlich specifically state that while they cannot recall completing a dues deduction authorization

objected to having dues deducted since they were hired. It is the Employer's practice to ask new employees to sign a dues checkoff authorization form at their new hire orientation, which is typically held within 7 days of their date of hire. The hire dates of the parties who revoked their dues checkoff are as follows: Gramlich - 7/14/94, Vogt - 8/10/82, and Tercha - 10/17/88. On October 20, the Union sent these Charging Parties copies of its Fee Payers Objection Plan, which explains that nonmembers may limit their Union dues obligation to amounts expended for representational activities. To date, the Employer has continued to deduct dues⁹ from the paychecks of Gramlich, Tercha and Vogt, and the Union has continued to accept such dues.

Between September 26 and October 14, the National Right to Work Legal Defense Foundation ("Right to Work") filed the instant charges against the Union, Employer, and International on behalf of the Charging Parties and all similarly situated employees. The Charging Parties allege that they were coerced into joining the Union under threat of discharge, and consequently their discipline for violating Union rules violates Section 8(b)(1)(A) and the Union's duty of fair representation. In addition, Gramlich, Tercha, and Vogt contest dues deduction after their checkoff revocation. Finally, the Charging Parties complain that they did not receive a copy of the Union Constitution and By-Laws, that Gramlich requested copies but was told they were available in the Union hall, and all but Allen allege that they did not receive a copy of the Contract.

ACTION

We conclude that, absent settlement, complaint should issue alleging that the Union violated Section 8(b)(1)(A) by failing to inform employees of their right to be a nonmember and their right to pay only Union dues and fees related to representational activities prior to obligating employees pursuant to a union-security clause. Since the

form, they may have done so during their new employee orientation. Tercha simply can't recall.

⁹ After the Charging Parties made a Beck objection, the Employer only deducted representational amounts.

remedy for this violation includes giving retroactive effect to their resignation from Union membership, the Union's disciplinary action against the Charging Parties for crossing the picket line subsequent to their retroactive resignations should be vacated. We also conclude that complaint should also issue, absent settlement, against the Union alleging violation of 8(b)(1)(A) and the Employer alleging violation of 8(a)(3) for deducting dues from Charging Party Tercha's paycheck subsequent to what appears to be a timely checkoff revocation.

However, we conclude that, absent withdrawal, the Region should dismiss the charges by Gramlich and Vogt against the Union and Employer for continuing to deduct dues from their paychecks as their checkoff revocations appear to have been untimely. The Region should also dismiss, absent withdrawal, the allegations that the Charging Parties were informed that they must join the Union, as the conduct occurred outside the 10(b) period. We also conclude that, absent withdrawal, the Region should dismiss the charges that the Charging Parties did not receive copies of the Constitution, By-Laws and Contract. Finally, we conclude that all charges against the International should be dismissed, absent withdrawal, since there is no evidence that it acts as an exclusive bargaining representative, was involved in conduct alleged by the Charging Parties, or was an agent of the Union with respect to such conduct.

A. The Union Violated Section 8(b)(1)(A) by Failing to Inform Employees of their Right to be Nonmembers and their Right to Pay only Representational Union Dues and Fees

In Paramax¹⁰ the Board held that, as part of its duty of fair representation, a union that negotiates a union-

¹⁰ Electrical Workers, Local 444 (Paramax Systems), 311 NLRB 1031, 1040 (1993), enf. denied 41 F.3d 1532 (D.C. Cir. 1994); see also Local 74, Serv. Employees (Parkside Lodge), 323 NLRB No. 39, slip op. at 2 (Mar. 21, 1997), petition for review pending sub nom., Orce v. NLRB, (2d Cir., No. 97-4038) (case represented a "hybrid of California Saw and Weyerhaeuser" [see infra at 8 n.15] in that the union failed to provide employees any notice of Beck or GM rights).

security clause requiring employees to be union "members in good standing" has an obligation to inform employees "that their sole obligation under the union-security provision [is] to pay dues and fees." The notice requirement was imposed because the Board, for the first time, concluded that "members in good standing" union-security clauses are ambiguous and misleading as employees may erroneously "interpret the clause as requiring full membership and all attendant financial obligations. . . ."11 Such an interpretation is contrary to the Supreme Court decisions in General Motors12 and Beck13 which respectively hold that employees subject to a union-security clause have the right to be nonmembers (subject to the duty to pay periodic union dues and fees), and that a union has a fiduciary duty not to spend an objecting nonmember's dues and fees on nonrepresentational activities.

Even where there is no alleged ambiguity in the union-security clause, in Weyerhauser14 the Board held that a union likewise breaches its duty of fair representation when it fails to provide employees a one-time notice "of the statutory limits on union-security obligations" as set forth in Beck and General Motors prior to obligating them to pay dues under the union-security clause.15 According to the Board:

11 Id. at 1037.

12 373 U.S. at 740.

13 487 U.S. at 762-63.

14 Paperworkers, Local 1033 (Weyerhauser), 320 NLRB 349, 350 (1995), rev'd sub nom. Buzenius v. NLRB, 126 F.3d 788 (6th Cir. 1997), petition for cert. filed 66 U.S.L.W. 3427 (Dec. 8, 1997).

15 In California Saw & Knife Works, 320 NLRB 224, 231 (1995), enf'd 157 LRRM 2287 (7th Cir. Jan. 14, 1998), the Board held that a union "has an obligation under the duty of fair representation to notify them of their Beck rights before they become subject to obligations under the clause." In Weyerhauser, 320 NLRB at 350, the Board required that notice of GM rights also be provided prior to

Current members must be told of their General Motors rights if they have not previously received such a notice, in order to be certain that they have voluntarily chosen full membership and a concomitant relinquishment of Beck rights.¹⁶

The Union here violated Section 8(b)(1)(A) and its fiduciary duty to the Charging Parties under both rationales. Like the union in Paramax, the Union negotiated a union-security clause requiring that employees be and remain Union members in good standing as a condition of employment - which clause Paramax holds has the potential to mislead employees into believing they must be full dues-paying Union members in order to keep their jobs. Allen even states that he was so misled. Pursuant to that misleading union-security clause, the Union collected full dues and fees from the Charging Parties, without ever explaining to them that the Supreme Court has construed "membership" to mean only a nonmember's obligation to pay representational fees and dues. Additionally, as in Weyerhauser, the Union breached its fiduciary duty by obligating the Charging Parties to a union-security clause without providing them a one-time notice of their rights under Beck and General Motors. Accordingly, a Section 8(b)(1)(A) complaint should issue, absent settlement, alleging that the Union failed to give the Charging Parties notice of those rights.

B. The Union Cannot Discipline the Charging Parties for Conduct which Occurred Subsequent to their Retroactive Resignation, which Remedies the Lack of Notice Violation

We conclude that because the Board has determined that the appropriate remedy for a union's failure to provide Beck and General Motors notice is the right to retroactively resign from that union, the Union is precluded from disciplining the Charging Parties for crossing the picket line during the strike when their

obligating employees to pay dues pursuant to the union-security clause in order to effectuate Beck rights.

¹⁶ Weyerhauser, 320 NLRB at 349.

retroactive resignations would be effective on a date well before the strike took place.

In a recent decision involving a union's failure to inform employees of their Beck and General Motors rights, Rochester,¹⁷ the Board held that, in order to fully restore the status quo ante, the appropriate make-whole relief should include "nunc pro tunc reimbursement"¹⁸ of all nonrepresentational dues to employees who failed to receive such notification and who elect to become nonmember objectors after receiving notice of their rights, retroactive to the time period covered by the complaint.¹⁹ A union found to have violated the notice requirement can cut off liability only if it can demonstrate that, "with respect to any given employee, that subsequent to the events covered by the complaint, the employee was given the required notice of its General Motors and Beck rights and that the employee declined the opportunity to elect nonmember status and become an objector."²⁰

The Charging Parties in the instant matter raise an issue of first impression: whether the extraordinary remedy for a union's failure to provide unit employees a one-time notice of their right to resign and to object to non-representational dues and fees, which was first articulated in Rochester, precludes a union from

¹⁷ Rochester Mfg. Co., 323 NLRB No. 36, slip op. at 3-4 (1997), petition for review pending sub nom. Cecil v. NLRB (6th Cir., No. 97-5302).

¹⁸ *Nunc pro tunc* is defined as "[a] phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done." Black's Law Dictionary 964 (5th Ed. 1979).

¹⁹ Id. at 4. The Board has subsequently applied this remedy without discussion in Grocery Employees, Local 738 (E.J. Brach), 324 No. 180, slip op. at 2 (Nov. 7, 1997), and Local 74, Service Employees (Parkside Lodge), 323 NLRB No. 39, slip op. at 2 (Mar. 21, 1997).

²⁰ Id. (emphasis added).

maintaining otherwise lawful disciplinary actions against members for conduct which occurred during the period of their retroactive resignation. We conclude that a reasonable extension of the Rochester remedy is that, for those members who choose to retroactively resign their union membership, a union may not discipline them for crossing the picket line during that time period. The Charging Parties here are entitled to the retroactive resignation remedy detailed in Rochester. As discussed supra, the Union did not inform them of their Beck and General Motors rights, which violates the Act under Paramax and Weyerhaeuser. Once the Charging Parties did learn of their rights from other parties, they exercised those rights immediately by resigning from the Union and (in all but one case) objecting to their dues being used for nonrepresentational purposes.²¹ Consequently, applying Rochester, the Charging Parties are entitled to resign retroactive to the Section 10(b) six month period prior to filing the instant charges. This would mean their resignations became effective, *nunc pro tunc*, between March and April - well before the August strike during which they crossed the picket line to return to work in violation of the Union Constitution.²²

In light of the fact that Board precedent requires the Union to honor the Charging Parties' resignations - retroactive to prior to the strike - for having violated

²¹ Although Allen did not object to the use of his dues for nonrepresentational purposes, we conclude that he is not deprived of the Rochester retroactive right to resign. The Union's violation exists whether or not Allen elects a full remedy. Moreover, under Rochester the Union can only cut off its liability to Allen if he elects to remain a member and a nonobjector following notice of his rights. Slip op. at 4. In addition, presumably Allen may yet elect to file an objection to nonrepresentational dues once the Union fulfills its statutory notice requirements. Id.

²² Applying Rochester, the Charging Parties who objected to the use of their Union dues for nonrepresentational purposes are also entitled to reimbursement of nonrepresentational dues deducted during that same time period.

the Act, it would be anomalous to hold that the Union may ignore those retroactive resignations (which remedy the Union's unlawful conduct) and consider the Charging Parties to be Union members subject to discipline during the strike for crossing the picket line.

Accordingly, since under Rochester the Charging Parties are considered to have legally opted to become nonmembers for purposes of their union-security obligation during the strike, they were likewise not Union members subject to Union discipline for returning to work during the strike. As a result, the Union's discipline of the Charging Parties, who are legally considered not to be members of the Union at the time they crossed the picket lines, must be vacated.

C. The Union did not Violate the Act by Failing to Inform the Charging Parties of the Constitutional Provisions Prohibiting Working During a Strike

In Scotfield v. NLRB,²³ the Supreme Court held that a union rule is valid and may be enforced against members if it "reflects a legitimate union interest, impairs no policy Congress has embedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule."

In Allis-Chalmers,²⁴ the Supreme Court held that the type of rule at issue here, a prohibition on Union members returning to work during a strike, constitutes a legitimate union rule that violates no policy of the Act, and therefore a union may discipline members for violating it. Moreover, "the conduct of 'internal union matters,' such as the adequacy with which a union communicates its [internal] policies to employees, is not subject to the fair representational doctrine," unless it has a detrimental effect on employment, which is not alleged here.²⁵

²³ 394 U.S. 423, 430 (1969).

²⁴ NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 183 (1969).

²⁵ Pottery Workers (Colton Mfg.), 254 NLRB 696, 701 (1981) (the ALJ rejected the theory that a union violated

The applicability of Allis-Chalmers to the instant charges is not affected by Board decisions holding that a union breaches its duty of fair representation by disciplining members who were not informed of internal Union rules restricting resignations.²⁶ Those decisions antedate the Supreme Court's decision in Pattern Makers²⁷ outlawing all restrictions on resignation (without regard to whether members had notice of the restriction) on the grounds that such restrictions are inconsistent with the Act's policy of voluntary unionism.²⁸ Even if the decisions requiring unions to inform members of resignation restrictions were still good law, they would be inapplicable to the instant case because there is no evidence that the Union rule prohibiting members from working during a strike, or any other Union rule, restricts

the Act when it failed to inform members that the union constitution provided for forfeiture of strike benefits if they returned to work during the strike) (citing Food and Commercial Workers, Local 222 (Iowa Beef Processors), 245 NLRB 1035, 1038-39 (1979)).

²⁶ See Miscellaneous Drivers and Helpers Union, Local 610 (Browning-Ferris), 264 NLRB 886, 900-02 (1982); Electrical Workers, Local 441 (Phelps Dodge), 281 NLRB 1009, 1012-23 (1986); Oil Workers, Local 6-578 (Gordy's), 238 NLRB 1227, 1230 (1978), enf'd 619 F.2d 708 (8th Cir. 1980); Local 1384, Automobile Workers (Ex-Cell-O), 227 NLRB 1045, 1048-49 (1977).

²⁷ Pattern Makers' League v. NLRB, 473 U.S. 95, 101, 105, 115 (1985).

²⁸ 473 U.S. at 101. The Court reached this result despite its acknowledgment that a literal interpretation of Section 7 would indicate that "fining employees to enforce compliance with [a] union rule would violate" an employee's right to refrain from concerted activity. See also Machinists, Local 1414 (Neufeld Porsche-Audi), 270 NLRB 1330, 1333 (1984) (union restrictions on resignation impair the "fundamental policy . . . imbedded in the very fabric of the labor laws that distinguishes between internal union actions and external union actions").

member resignations. These decisions are also distinguishable from the instant matter because - unlike the Charging Parties here who never attempted to resign or even expressed an interest in resignation before crossing the picket line - the union members in those cases attempted to resign but were unsuccessful due to their unions' secret resignation restrictions.

Further, in the absence of an attempt to resign, in order to successfully challenge union discipline the Board requires members to submit objective evidence that they believed an attempt to resign would be futile.²⁹ This requires more than the mere maintenance and publication of an unlawful resignation restriction; a member must have witnessed union harassment or ridicule of members who tried to resign, or the rejection of such resignations.³⁰ Here, the Charging Parties offer no evidence that they knew of any Union rejection of other members' resignations, or had witnessed Union harassment or ridicule of members who submitted resignations.

Consequently, since no Union rule restricted the Charging Parties' right to resign from the Union, and they made no attempt to resign or to demonstrate that resignation was futile before crossing the picket line, the Union did not breach its duty of fair representation by failing to inform the Charging Parties of the rule prohibiting working during a strike because, applying

²⁹ See Telephone Traffic Union, Local 312 (New York Tel. Co.), 278 NLRB 998, 998 n.2 (1986); Communications Workers, Local 9201 (Pacific Northwest Bell), 275 NLRB 1529, 1529 (1985); Machinists, Local 1374 (Columbia Machine), 274 NLRB 123, 126-28 (1985); but see Operating Engineers, Local 399 (Tribune Properties), 304 NLRB 439, 443 (1991) (in dictum, ALJ questioned whether there must be an objective basis that resignation is futile where union rule provides that the only way to escape union discipline is to be expelled).

³⁰ Pacific Northwest Bell, 275 NLRB at 1529 (the "mere existence of a restriction on resignation is insufficient to support a finding that it is futile to resign, even where the member has knowledge of the restrictions"); see also Columbia Machine, 274 NLRB at 128 (same).

Allis-Chalmers and Scotfield, the Charging Parties were free to resign to escape the rule.

D. The Union did not Violate the Act by Failing to Provide Copies of the Contract

In South Jersey Detective Agency,³¹ the Board held that a union violates its duty of fair representation to deal fairly with employees, and Section 8(b)(1)(A) when it fails to allow unit employees who request copies of the collective bargaining agreement "the opportunity to examine its agreement with their employer. . . ." The right to examine the collective bargaining agreement is necessary for an employee "to understand his rights under [the contract] and . . . to determine the quality of his representation under them."³² Since only Gramlich requested a copy of the Contract, the other Charging Parties' charges must be dismissed. As to Gramlich, because the Union made the Contract available for review in the Union hall, it met its duty under South Jersey Detective Agency to make it available for her examination. Consequently, all charges relating to the Union's failure to provide copies of the Contract should be dismissed.

E. The Charges Against the International Should be Dismissed

In California Saw,³³ the Board upheld dismissal of a charge that a district lodge was the agent of its affiliated international (which administered the Beck policy for district and local lodges), and therefore liable for having failed to inform the charging party that his

³¹ Law Enforcement Officers, Local 40B (South Jersey Detective Agency), 260 NLRB 419, 419-20 (1982) (emphasis added). Accord: Vanguard Tours, Inc., 300 NLRB 250, 265 (1990) ("a union violates the Act when it refuses to show to employees the collective-bargaining agreement which determines their rights "), enf'd. in pertinent part 981 F.2d 62 (2d Cir. 1992).

³² Id. at 420.

³³ 320 NLRB at 230, 250.

Beck dues objection had been misdirected. The Board wrote that it has been its consistent position that an agency relationship cannot be "based on the mere fact of affiliation between the union entities."³⁴

Congress has made clear that international unions are not to be held liable for the acts of their locals purely on the basis of the relationship between them.³⁵

However, in California Saw there was no evidence that the district lodge was authorized to act as the international's agent for purposes of Beck objections or to accept dues objections, or that the charging party believed that it was. Moreover, although the district lodge and international were signatories to the collective bargaining agreement, there was no evidence that they jointly administered the international's Beck policy or that the international was acting as the exclusive bargaining representation, where the duty of fair representation is owed by a union by virtue of its role as exclusive bargaining representative.³⁶

Like the district lodge in California Saw, in the instant case there is absolutely no evidence that the International is liable for any of the charges. There is no evidence that the International served as an exclusive bargaining representative of the employees. Since only the Local Union is the Section 9(a) representative of the bargaining unit, the International has no independent liability for the failure to inform the Charging Parties of their Beck or GM rights and to provide copies of Union documents; and there is no evidence that the International

³⁴ Id. at 250 (citations omitted).

³⁵ Id.

³⁶ Id. at 228, 250-51. "Liability of an International for the actions of an affiliate has been found in circumstances of joint bargaining status. . . ." Id. at 251.

signed the Contract³⁷ or is involved in its administration. Likewise, there is no evidence that the International was involved in the failure to inform employees of their statutory obligations or the disciplinary actions against the Charging Parties. Finally, there is no evidence that the International was authorized to conduct such actions, or that the Charging Parties believed it to be so authorized. Thus, applying California Saw, all charges against the International should be dismissed, absent withdrawal, for lack of an independent duty of fair representation and for lack of evidence that it was an agent to the Union which possessed such a duty, as discussed supra.

F. The Allegations that the Employer Informed The Charging Parties they Must Join the Union are Time-Barred

Section 10(b) of the Act expressly provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board. . . ." The Charging Parties allege that they were affirmatively misled by the Employer as to their Union obligations when they were hired.³⁸ Since all of the Charging Parties were hired long before six months prior to their filing charges with the Region, see supra at 5, their charges that they were affirmatively misled by the Employer as to their Union obligations must be dismissed as time-barred, absent withdrawal.

G. Only Tercha Submitted a Timely Dues Checkoff Revocation

³⁷ Under California Saw, supra, a union may have signed a collective bargaining agreement without becoming liable as an exclusive bargaining representative.

³⁸ Two of the Charging Parties, Allen and Gramlich, allege that when they were hired the Employer informed them that they had to join the Union. Another, Tercha, assumed as a new employee that she had no choice but to join the Union, while Vogt claims his new fellow employees informed him he was required to be a Union member.

Charging Parties Gramlich, Tercha and Vogt submitted dues checkoff revocations, and allege that the Employer and Union unlawfully refused to honor these revocations. However, we find that the only Charging Party to submit a timely dues checkoff revocation is Tercha. Consequently, the Region should issue a complaint against the Union and Employer for their failure to honor Tercha's checkoff revocation, and dismiss similar charges by Vogt and Gramlich.

A union violates Section 8(b)(1)(A), and an employer violates Section 8(a)(1) and (3), when they fail to honor an employee's union dues checkoff revocation.³⁹ Where an employee's dues checkoff authorization expressly states that the employee is "'obligat[ed] to pay dues even in the absence of union membership,'" the dues checkoff is not automatically revoked by resignation from union membership.⁴⁰ Rather, an employee must submit a timely dues revocation,⁴¹ as the union and employer may lawfully ignore an untimely revocation.⁴² For example, in National Oil Well, an employee executed a dues checkoff authorization on April 14, 1988, which renewed annually. The authorization provided that it renewed annually, and could be revoked each year up to 15 days after the April 14 expiration. Consequently, neither the employer nor the union violated the Act when they continued to deduct union dues from the employee's paycheck after receiving his dues revocation dated July 20.⁴³

³⁹ Affiliated Food Stores, Inc., 303 NLRB 40, 41 (1991) (member's union resignation deemed to revoke checkoff where checkoff authorization is tied to union membership).

⁴⁰ American Tel. and Tel. Co., 303 NLRB 942, 943 (1991) (quoting Electrical Workers IBEW Local 2008 (Lockheed Space Operations), 302 NLRB 322, 328-39 (1991)).

⁴¹ Lockheed, 302 NLRB at 329.

⁴² See e.g., Steelworkers, Local 4671 (National Oil Well), 302 NLRB 367, 368 (1991).

⁴³ 302 NLRB at 367-68.

As an initial matter, we conclude that the Charging Parties signed dues checkoff authorization cards. Although neither the Union nor the Employer can locate the actual checkoff authorization forms signed by these Charging Parties, the Charging Parties do not contend they never signed a dues checkoff authorization. They simply cannot recall signing them. Moreover, their revocation letters assume that they signed authorization forms, and they never complained about dues being deducted over the years prior to their recent revocations. Additionally, it has been the Employer's routine practice to have new employees sign a dues checkoff authorization during the employee's first 7 days at work. In light of the fact that we are unable to locate any Board cases requiring an employer to produce a dues deduction authorization form in order to justify ongoing dues checkoff for an employee who has not previously objected to lengthy periods of checkoff, we conclude that the Charging Parties signed dues checkoff authorization forms within 7 days of their date of hire.

We also conclude that the dues checkoff authorization form they signed was the one in use by the Union and Employer for the past 26 years, see supra at 4. Those forms provide that the checkoff is "not conditioned on . . . membership in the Union." Consequently, under Lockheed, their resignations from the Union did not automatically revoke their checkoff authorizations. Nor was the checkoff authorization affected by the expiration of the Contract.⁴⁴ Thus, the only way the Charging Parties could end their dues checkoff was to submit a timely dues checkoff revocation. According to the authorization, a dues

⁴⁴ In Frito-Lay, Inc., 243 NLRB 137, 138-39 (1979), the Board expressly rejected the argument that it is a per se violation for an employer to deduct dues after the collective-bargaining agreement expires pursuant to a revocation executed after the contract expiration date. Instead, the Board held that it will only find that checkoffs are revocable at will following contract expiration where such an intention is evident in the language of the contractor checkoff. Where, as here, no such intention is evident, the only checkoff escape periods are during the window prior to the expiration of the contract and the anniversary date of the execution of the checkoff authorization. Id. at 139.

checkoff revocation is timely if it is submitted between 60 and 75 days prior to the renewal date, which is the date it was initially executed.

As in National Oil Well, it appears that Vogt and Gramlich's letters revoking their dues checkoff were untimely. The reasonable assumption is that signed his authorization within a week of his August 10 hire date. Since the window period for revocation occurs in June, his August 19 revocation was untimely and could be ignored by the Employer and Union, and this aspect of his charge should be dismissed. Similarly, Gramlich signed her authorization within a week of her July 14 hire date, meaning she could timely revoke in May. Instead, she revoked on September 29, so the Employer and Union could lawfully ignore her revocation also, and this aspect of her charge should be dismissed.

However, with respect to Tercha, she was hired on October 17. According to the Employer's routine practice, she would have signed the checkoff authorization form within 7 days of her hire date, meaning sometime between October 17 and October 24. Thus, she could timely revoke that authorization approximately August 17-24. Tercha revoked her dues checkoff authorization on August 22. Since it appears that Tercha's revocation may be timely based on the Employer's routine practice in obtaining dues checkoff authorization signatures, and since the Employer and Union have been unable to produce her actual dues checkoff authorization form in order to precisely determine whether her revocation was timely, we conclude that complaint should issue against the Employer for continuing to deduct dues from Tercha's paycheck subsequent to her revocation and against the Union for accepting those dues.

CONCLUSION

For these reasons, we conclude that, absent settlement, complaint should issue alleging that the Union violated Section 8(b)(1)(A) by failing to inform employees of their right to be a nonmember and their right to pay only Union dues and fees related to representational activities prior to obligating employees pursuant to a union-security clause. Since the remedy for this violation includes giving retroactive effect to their resignations from Union membership, the Union's disciplinary action

against the Charging Parties for crossing the picket line subsequent to their retroactive resignations should be vacated. We also conclude that complaint should also issue, absent settlement, against the Union alleging violation of 8(b)(1)(A) and the Employer alleging violation of 8(a)(3) for deducting dues from Charging Party Tercha's paycheck subsequent to what appears to be a timely checkoff revocation.

However, we conclude that, absent withdrawal, the Region should dismiss the charges by Gramlich and Vogt against the Union and Employer for continuing to deduct dues from their paychecks as their checkoff revocations appear to have been untimely. The Region should also dismiss, absent withdrawal, the allegations that the Charging Parties were informed that they must join the Union, as the conduct occurred outside the 10(b) period. We also conclude that the Region should dismiss, absent withdrawal, the charges that the Charging Parties did not receive copies of the Constitution, By-Laws and Contract. Finally, we conclude that all charges against the International should be dismissed, absent withdrawal, since there is no evidence that it acts as an exclusive bargaining representative, was involved in conduct alleged by the Charging Parties, or was an agent of the Union with respect to such conduct.

B.J.K.