

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8

WKYC-TV, INC.

and

CASE NO. 8-CA-039190

NATIONAL ASSOCIATION OF BROADCAST  
EMPLOYEES AND TECHNICIANS, LOCAL 42  
a/w COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF  
TO RESPONDENT'S CROSS-EXCEPTIONS**

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On August 18, 2011, the parties in this matter motioned Administrative Law Judge Jeffrey D. Wedekind to decide this case on the basis of a stipulation of facts. On August 19, 2011, Judge Wedekind issued his Order granting this motion. Thereafter, he issued his Decision and Order (JD-60-11) in this matter on September 30, 2011.<sup>1</sup>

Having found that the Respondent did not violate the Act, Judge Wedekind did not address Respondent's argument that the complaint was time barred. Respondent excepts to this portion of the Judge's decision, renewing its argument that the claims in the complaint are barred by Section 10(b) of the Act because the Union filed the charge in this matter more than six months after the Respondent implemented its Posted Conditions.<sup>2</sup> Respondent argues that since dues checkoff was not included in its Posted Conditions, the Union was placed on notice that it intended to cease dues deduction.

However, the Respondent's argument fails on both the law and the facts of the case. A cessation of dues deduction was not part of the Respondent's last and final offer nor was it discussed in bargaining.<sup>3</sup> In fact, the continuation of dues deduction was provided for in Respondent's last and final offer.<sup>4</sup> When, on January 4, 2010, the Respondent implemented portions of its last and final offer, it did not include dues check off as part of the implemented provisions.<sup>5</sup> However, it continued deducting dues until October 6, 2010.<sup>6</sup>

An employer may implement terms and conditions of employment only if they were "reasonably comprehended" as part of Respondent's proposals before impasse.<sup>7</sup> Since the

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<sup>1</sup> Hereinafter, ALJD, p. \_\_ will indicate the page in the ALJ's Decision, JD-60-11. "S.R." will be used to reference the Stipulated Record. "Ex." will be used to reference exhibits attached to the Stipulated Record.

<sup>2</sup> After reaching a valid impasse, the Respondent implemented portions of its final offer. These implemented portions are referred to as the Posted Conditions. S.R. 25, 26, 27. Ex. M.

<sup>3</sup> S.R. 21, 24.

<sup>4</sup> Ex. J, pp. 3-4.

<sup>5</sup> S.R. 25, 26. Ex. M.

<sup>6</sup> S.R. 28, 32.

<sup>7</sup> Taft Broadcasting Co., WDAF AM-FM TV, 163 NLRB 475, 478 (1967).

cessation of dues deduction was never proposed by the Respondent during bargaining, Respondent was not at liberty to cease dues deduction based on its implementation of its last and final offer. Any attempt by Respondent to argue that the cessation of dues deduction occurred as part of its implementation of portions of its final offer is not supported by any evidence. The fact that dues deduction was not included as part of the implemented terms and conditions of employment could not have put the Union on notice that the Respondent intended to cease dues deduction at that time or in the future, as Respondent (1) had not proposed its elimination and (2) kept it in place for months thereafter.

Further, it is well settled that “a statement of intent or threat to commit an unfair labor practice does not start the statutory six months running.”<sup>8</sup> The limitations period begins to run only when the unfair labor practice *occurs*.<sup>9</sup> “It is also firmly established that the 10(b) period commences only when a party has clear and unequivocal notice of a violation of the Act.”<sup>10</sup> Here, the Respondent did not cease dues deduction until October 6, 2010, well within six months of the filing of the charge. Thus, the Respondent’s argument that the Complaint is time barred is without merit.

Respectfully submitted,



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<sup>8</sup> Leach Corp. 312 NLRB 990, 991 (1993), *enfd.*, 54 F.3d 802 (D.C. Cir. 1995) (quoting NLRB v. Al Bryant, Inc., 711 F.2d 543, 547 (3d Cir. 1983).

<sup>9</sup> Id.

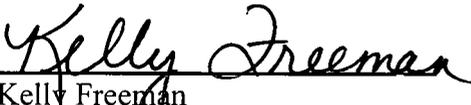
<sup>10</sup> Id.

**Proof of Service**

I hereby assert that copies of the foregoing Counsel for the Acting General Counsel's Answering Brief to Respondent's Cross-Exceptions were served by electronic mail this 23rd day of November, 2011 to the following:

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