

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

Advice Memorandum

DATE: August 14, 2012

TO: Margaret Diaz, Regional Director
Region 12

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

SUBJECT: 1199 SEIU United Healthcare Workers East 536-2556
(Osceola Regional Medical Center) 536-2571
Case 12-CB-075809 536-2585

This case was submitted for advice as to whether the Union's dual dues checkoff and membership card violated Section 8(b)(1)(A) of the Act by requiring that notice of dues revocation be sent by certified mail. We conclude that such a requirement does not violate the Act because it is an internal union matter involving a voluntary agreement between the employee and the Union, and it is not contrary to any overriding public policy.

FACTS

The Union represents a unit of the Employer's housekeeping employees. On October 19, 2010, during the Union's organizing campaign, the Charging Party, who belongs to this bargaining unit, signed a union membership card.

The membership card is a "dual-purpose" card containing two clauses. First, the signing employee agrees to become a member of the Union and authorizes it to represent the employee in bargaining. Second, the signing employee authorizes the Employer to deduct dues and remit them to the Union, and contains the following revocation clause:

This authorization shall remain in effect for one year, irrespective of whether I am a union member, and be automatically renewed for periods of one year from the date signed below, or until the expiration of the union's contract with my employer, whichever is sooner. I can revoke this authorization by sending written notice by certified mail to my employer and to the union not more than 20 days and not less than 10 days before the expiration of the

yearly period, or before the expiration of the union contract with my employer, whichever is sooner.¹

In October 2010, the Charging Party signed the form. In December 2011, the Charging Party decided to quit the Union. On December 8, she mailed a letter to the Union resigning her membership. On December 22, the Union denied her request to resign membership because it had not been sent by certified mail. The Charging Party sent a second resignation letter by certified mail on December 28, which was again denied on January 5, 2012.² She then filed the charge in the present case on March 2, 2012, alleging that the Union unlawfully restricted her right to resign her union membership. The charge also alleged that the dues-checkoff agreement violates Section 8(b)(1)(A) of the Act because it requires the revocation notice to be by certified mail.³ On April 5, 2012, the Union sent another letter to the Charging Party stating that her request to resign membership was accepted, retroactive to January 5, 2012. It also stated that her request to revoke her dues-checkoff authorization was rejected because it was not timely.⁴ The collective-bargaining agreement does not contain a union-security agreement.

ACTION

We conclude that the dues-checkoff agreement clause requiring revocation by certified mail does not violate the Act because it is an internal union matter involving a voluntary agreement between the employee and the Union, and the requirement is not contrary to any overriding public policy.

Employees have a Section 7 right to refrain from financially supporting a union through dues-checkoff authorizations.⁵ However, employees may waive that statutory right and contract to pay dues by checkoff to a union, so long as the waiver

¹ The Charging Party's annual revocation "window period" runs from September 29 through October 9.

² Neither of the Charging Party's letters specifically revoked her dues checkoff authorization.

³ The Region has found merit to the allegation that the Union unlawfully restricted the Charging Party's right to resign her union membership.

⁴ The Region has determined that the Charging Party's letters, even were they to be construed as notices to revoke dues checkoff authorization, were untimely.

⁵ *American Screw Company*, 122 NLRB 485, 489 (1958); *Luke Construction Company, Inc.*, 211 NLRB 602, 603 (1974).

is clear and explicit.⁶ Further, since a dues authorization agreement between an employee and the union involves an internal union matter (i.e., a voluntarily entered-into agreement to financially support the union that does not affect employment status) it does not implicate Section 8(b)(1)(A) unless it lacks any legitimate purpose or is contrary to an overriding policy contained in national labor law.⁷

Checkoff authorization terms are limited by Section 302(c)(4) of the Act. A union must provide members with a reasonable opportunity to revoke their checkoff authorizations. Section 302(c)(4) requires that such opportunity be given at least once per year, or at the termination of an applicable collective-bargaining agreement, whichever occurs sooner.⁸ Consistent with this requirement, the Act permits checkoff

⁶ *Trico Products*, 238 NLRB 1306, 1309 (1978); *Newport News Shipbuilding and Dry Dock Company*, 253 NLRB 721, 721 (1980). Applying the clear and unequivocal waiver doctrine, the Board has held that for a checkoff authorization to remain in effect after an employee resigns membership from the union, it must specifically provide that dues deduction continues even in the absence of union membership. See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328-9 (1991) (an employee must voluntarily agree, by clear and unmistakable language, to continue paying dues pursuant to a checkoff authorizations even after resignation of union membership); *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367, 368 (1991) (the explicit language in the dues-checkoff authorization clearly authorized dues deduction even in the absence of union membership). In the instant case, the Charging Party's checkoff authorization card contained a provision in which she agreed to continue checkoff for one year irrespective of whether she remained a union member.

⁷ *Automotive & Allied Industries Local 618 (Sears, Roebuck and Company)*, 324 NLRB 865, 866-867 (1997) (the internal affairs of a union do not come within the purview of the Act unless an employee's employment status is affected or through a showing that the union's actions are contrary to an overriding policy contained in national labor law; here, union's individual contracts with employees, in which employees agree to pay financial-core fees to the union for the duration of the union's representation of the employees, or for the duration of their employment, implicate neither). See *Scofield v. NLRB*, 394 U.S. 423, 426 n.3, 430 (1969) (internal union rules are a "federally unentered enclave" governed by local contract law).

⁸ See *Lockheed*, 302 NLRB at 324-325. See also *Hayes v. United Rubber Cork, Linoleum and Plastic Workers of America*, 523 F.Supp. 50, 54 (U.S.D.C. N.D. Alabama, 1981) (employer's failure to honor employees' non-anniversary checkoff revocations did not derogate their rights under the terms of their dues checkoff authorizations; those authorizations effectively track the words of the statute, and these are the only statutory rights to which the employees may claim entitlement in this action).

authorization contracts that automatically renew unless an employee revokes the agreement during a brief “window period.”⁹ The Board has approved window periods “between 20 and 10 days before” the anniversary date of the authorization.¹⁰ Section 302(c)(4) does not specify a particular manner in which revocation must occur. The Board has found revocability terms lawful so long as they did not “constitute such an impediment to an employee’s freedom of revocation” as to effectively preclude them from revoking their dues assignments.¹¹

In the instant case, the dues deduction authorization card plainly states that the employee may revoke checkoff “by sending written notice by certified mail to [the] employer and to the union” Thus, by signing the authorization card, the employee enters into a voluntary agreement with the Union authorizing dues checkoff and providing for revocation by certified mail. Applying the above principles, we conclude that this clear and unequivocal waiver of the right to revoke dues deduction by ordinary mail does not violate Section 8(b)(1)(A) because the requirement serves a legitimate purpose and does not contravene overriding public policy.

First, the certified mail requirement serves a legitimate purpose because it avoids disputes by enabling both the employee and the union to verify the date a letter was sent and received. Certified mail requirements are thus commonly included

⁹ *Shen-Mar Food Products, Inc.*, 221 NLRB 1329, 1329 (1976). See also “Justice Department’s Opinion on Checkoff,” 22 LRRM 46 (1948) (window periods do not violate Section 302(c)(4)).

¹⁰ *Frito Lay, Inc.*, 243 NLRB 137, 138 (1979).

¹¹ See *Boston Gas Co.*, 130 NLRB 1230, 1231 (1961) (a contract clause requiring employee to give written notice of revocation to both the employer and their union was not so unduly burdensome as to effectively preclude employees’ freedom of revocation). Compare *Felter v. Southern Pacific Col et al.*, 359 U.S. 326 (1959) (contract between union and employer that required railroad employees to use, as a necessary form for revoking a dues assignment, a writing executed on a form furnished by the union and forwarded by the union was an undue burden on employees’ statutory right to revoke their assignment after one year). See also *United Food and Commercial Workers Local 1000*, Case 16-CB-6583, Advice Memorandum dated June 30, 2004 (combination of restrictions including certified mail requirement, a short five-day window period, and requirement that resignation be *received*, not sent, within window period deprived employees of any meaningful possibility of exercising revocation rights).

in commercial option contracts and self-renewing lease agreements.¹² Moreover, courts that have reviewed such provisions have typically found that they serve a legitimate purpose for contracting parties.¹³ Indeed, certified mail requirements appear to be a normal feature of dues checkoff agreements.¹⁴ Such a requirement is particularly useful in dues checkoff agreements, such as the one here, because the notice requirement contains a window period in which the revocation must take place. Therefore, a verifiable date, ascertainable through certified mail, eliminates potential disputes as to whether the notice was timely.

Second, the certified mail requirement does not contravene any overriding public policy. As an initial matter, since employees themselves must voluntarily agree to the provision, it cannot be said that the union is depriving them of their freedom to choose the revocation process.¹⁵ Further, the certified mail requirement does not extinguish employees' right to revoke checkoff, or place an excessive burden on their ability to revoke checkoff under Section 302(c)(4). Thus, the time frame for revocation, "not more than 20 days and not less than 10 days before the expiration of the yearly period, or before the expiration of the union contract with my employer, whichever is sooner," meets the Board's requirements for dues deduction escape periods.¹⁶ That

¹² See *Suss-Pontiac—GMC Inc. v. Boddicker*, 208 P.3d 269, 271 (Colo. 2008). See also *Osprey, L.L.C. v. Kelley-Moore Paint Co.*, 984 P.2d 194, 197-98 (Okla. 1999) (collecting cases).

¹³ *Id.*

¹⁴ In various cases that were before the Board on other checkoff-related issues, the dues deduction procedure contained a certified or registered mail requirement and the Board never raised concerns over the requirement. See, e.g., *Woodworkers of America (Weyerhaeuser Co.)*, 304 NLRB 100, 105 (1991) (revocations were timely, even though employees failed to comply with certain revocation procedures, including the registered mail requirement, where union's response to each employee indicated that the letters were received); *American Telephone and Telegraph Company*, 303 NLRB 942, fn2 (1991) (certified or registered mail requirement; applying *Lockheed* and *National Oil Well*, the dues-checkoff authorization signed by the employee obligated him to pay dues after his effective resignation from membership in the union); *Shen-Mar Food Products, Inc.*, 221 NLRB at 1329 (registered mail requirement; employer's failure to deduct and remit dues following employees' resignation from the union and their untimely cancellation of voluntary checkoff authorizations violated Section 8(a)(5)).

¹⁵ Cf. *Newport News Shipbuilding and Dry Dock Company*, 253 NLRB 721; *Felter v. Southern Pacific Col et al.*, 359 U.S. 326.

¹⁶ See *Frito Lay, Inc.*, 243 NLRB at 138.

time frame includes ample opportunity for employees to accomplish the revocation process, including going to the post office and sending the notice by certified mail. In sum, a certified mail requirement does not impose an arbitrary hurdle designed to delay or impede the employee's ability to meet the time requirement, and is not the kind of requirement that would tend to restrain employees from exercising their statutory right to revoke.¹⁷

Finally, we conclude that the two situations where the Board has ruled certified mail requirements to be unlawful, employee resignations from a union,¹⁸ and the filing of *Beck* objections by recent resignees,¹⁹ are distinguishable. First, both involve the imposition of certified mail requirements through unilaterally promulgated union rules, rather than through a voluntary agreement between the employee and the union.²⁰ Second, both involve situations in which the union is not legally permitted to enforce a window period.²¹ Thus, unlike here (where a union may

¹⁷ The Region notes that there is no union security requirement here because Florida is a right-to-work state, and questions whether the result would be different had the Charging Party been subject to a union security clause. We conclude that the same result would obtain in those circumstances, albeit for somewhat different reasons. Where there is a valid union security clause, an employee has an obligation to pay dues even if not a member, and the checkoff authorization, regardless of the particular language, is merely the employee's agreement to a particular administrative method for paying that obligation. The Board has held that unions may enforce such agreements so long as restrictions on revocation comply with Section 302(c)(4). See *Auto Workers Local 1752 (Schweitzer Aircraft Corp.)*, 320 NLRB 528, 532 (1995).

¹⁸ *Auto Workers Local 148 (McDonnell Douglas)*, 296 NLRB 970, 970 (1989); *Auto Workers v. NLRB*, 865 F.2d 791, 797 (1989), *enforcing* 283 NLRB 182 (1987).

¹⁹ *California Saw & Knife Works*, 320 NLRB 224, 236 (1995).

²⁰ *California Saw*, 320 NLRB at 230 (nationwide *Beck* rights notification policy); *Auto Workers*, 296 NLRB at 970 (provision in union's constitution).

²¹ *Id.* ("the January window period [for filing *Beck* objections], as applied solely to individuals who resign their union membership after the expiration of the window period, effectively operates as an arbitrary restriction on the right to be free to resign"); *Auto Workers*, 296 NLRB at 971 (window period for resignations served no legitimate purpose).

lawfully reject untimely dues checkoff revocations that fall outside the window period), the certified mail requirement in those contexts serves no legitimate purpose.

Therefore, the Region should dismiss this allegation, absent withdrawal.

/s/
B.J.K.