FRITO-LAY, Inc. and Rosalee Salinas, Amalgamated
Meatcutters and Butcher Workmen of North Amer-
ica, Local 540 and Rosalee Salinas. Cases 16-CA-
6787 and 16-CB-1183

June 28, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

On September 15, 1977, Administrative Law Judge
Charles W. Schneider issued the attached Decision in
this proceeding. Thereafter, the General Counsel filed
exceptions and a supporting brief. Respondent Union
filed a brief in opposition to General Counsel’s excep-
tions.

Pursuant to the provisions of Section 3(b) of the
National Labor Relations Act, as amended, the Na-
tional Labor Relations Board has delegated its au-
thority in this proceeding to a three-member panel.

We have decided to affirm the Administrative Law
Judge’s Decision. However, in response to our dis-
senting colleague’s opinion, we shall review briefly
the facts and relevant legal principles that support
this result. The facts were stipulated. The Company
and the Union have been signatories to successive
bargaining agreements since 1964. Of the two agree-
ments relevant to this dispute, the first ran from June
10, 1973, to June 9, 1976; the second was executed on
October 26, 1976, retroactive to June 10, 1976. Both
agreements provided for an agency shop and for
checkoff for employees who executed checkoff au-
thorizations. The authorization form utilized here
provides, in pertinent part:

This authorization shall take effect as of the date hereof and shall remain in effect until revo-
voked by me as hereinafter set forth. This authori-
sation shall be irrevocable for a period of one
year from the date hereof, or until the termina-
tion of the collective bargaining agreement now in
effect between my Employer and the Union,
or, if no such agreement is now in effect, until the
termination of any collective bargaining agree-
ment which may hereafter become effective be-
tween my Employer and the Union, whichever
occurs first. This authorization shall be irrevoca-
able after the expiration of the shorter of the peri-
ods above specified for further successive periods
of one year from the date of expiration of such
period or until the termination of any collective
bargaining agreement which may be effective
during such successive periods, whichever occurs
first. Revocation of this authorization shall be ef-
fective only if I give written notice of such revo-
cation to my Employer with a copy to the Local
Union, not more than twenty (20) days and not
less than ten (10) days prior to the expiration of
each period of one year or of the applicable col-
lective bargaining agreement between my Em-
ployer and the Union, whichever occurs first.

On July 27, 1976, during the hiatus between the
expiration of the old contract and the execution of the
new agreement, six employees who had executed au-
thorizations resigned their memberships in Respondent Union. In addition, they notified both the Union
and the Company that they no longer authorized
withdrawal of union dues from their paychecks. Re-
sonant Company initially complied with the em-
ployees’ request and ceased payroll deductions for
these six individuals. Thereafter, the Union com-
plained to the Company that under the correct inter-
pretation of the authorizations, dues deductions were
still mandated because the six employees had failed
to revoke “between ten and twenty days prior to the
anniversary of authorization or the termination of the
contract.” Upon reflection, the Company agreed with
the Union’s interpretation and reinstated the deduc-
tions effective September 4, 1976.

Based on the foregoing, our dissenting colleague
would find that Respondent Company violated Sec-
tion 8(a)(1) and (3) of the Act, and that Respondent
Union violated Section 8(b)(1)(A) and (2). She prem-
ises this finding on her view that, the specific provi-
sions in the employees’ dues-checkoff authorizations
regarding irrevocability notwithstanding. Section
302(c)(4) of the Act rendered the authorizations revo-
cable at will when the collective-bargaining agree-
ment expired on June 9, 1976. For the reasons stated
hereafter, we consider our colleague’s application of
Section 302(c)(4) to the facts of this case inappropria-
tely and, in any case, her interpretation of that section
erroneous.

Checkoff is a means by which employees voluntar-
ily assign a portion of their wages to a union in order
to pay their dues and other obligations to the union.
It is well settled that an employer violates Section
8(a)(3), (2), and (1) if it continues to withhold dues
from employees’ wages after the employees have val-
idly revoked their checkoff authorizations. See Indus-
trial Towel and Uniform Service, a Division of Cavalier
Industries, Inc., 195 NLRB 1121 (1972). It is equally
well settled that a union violates Section 8(b)(1)(A)
and (2) if it causes an employer to make deductions in
such circumstances. See Atlanta Printing Specialties
and Paper Products Union Local 527, AFL-CIO (The
Mead Corporation), 215 NLRB 237, 238, footnote 4
(1974), enf’d. 523 F.2d 783 (5th Cir. 1975). Thus, the
sole question presented in the instant case is whether
employees have the right to revoke their checkoff au-

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The Board stated:

"The limitations on checkoff in Section 302 were intended neither to create a new unfair labor practice, nor even to be considered in determining whether checkoff violates Section 8 of the Act. We reach this conclusion for the following reasons: (1) The original House Bill as reported and passed specifically made a checkoff that did not meet certain requirements an unfair labor practice under Section 8(a)(2), but this provision was eliminated from that section in conference, and from the Bill as finally enacted, thereby implying that unlawful checkoff was not intended to be made a per se unfair labor practice; (2) The restrictions on checkoff appear instead in Title III of the Act, with a similar implication; and (3) Section 302 itself establishes what was plainly intended to be the method of enforcing and preventing violations of its provisions, viz., criminal sanctions and injunction by U.S. District Courts, upon prosecution and petition for injunction by the Attorney General. [Emphasis supplied.]"

Consequently, our dissenting colleague is in error in suggesting that conduct which violates Section 302(c)(4) necessarily is an unfair labor practice. Moreover, as a matter of first impression, we find no support for our dissenting colleague's assertion that that section renders all checkoff authorizations, regardless of their terms, revocable at will in the absence of a collective-bargaining agreement.

Section 302 of the Act makes it a crime for an employer to willfully "pay, lend, or deliver" money to a labor organization or for a labor organization to "revert, demand, receive, or accept" such payments, except in certain limited circumstances. These restrictions were intended to deal with several forms of labor racketeering (e.g., bribery, extortion, and other corrupt dealings). See Monroe Lodge No. 770, International Association of Machinists and Aerospace Workers, AFL-CIO v. Litton Business Systems, Inc., 334 F.Supp. 310 (W.D.Va., 1971). Thus, the Act exempts from proscription certain types of payments which further legitimate ends. Among these are payments deducted from employees' wages in the form of union dues. Section 302(c)(4), however, restricts such checkoff arrangements by the additional proviso that "[t]he employer [have] received from each employee, on whose account such deductions are made, a written assignment which shall not be revocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner." All that is evident from this provision, however, is that Congress sought to assure that such authorizations could be revoked at least once a year and at the termination of any "applicable collective agreement." Consistent with this interpretation of congressional intent, the courts have construed Section 302(c)(4) to permit the use of authorizations which automatically renew unless they are revoked during an escape period of, for example, 10 days before or after the expiration of 1 year from their execution or the termination of the applicable collective-bargaining agreement. See, e.g., Litton Business Systems, Inc., supra; Amalgamated Meat Cutters and Allied Workers of North America, Local No. 593 v. Shen-Mar Food Products, Inc., 405 F.Supp. 1122 (W.D.Va., 1975). See also "Justice Department's Opinion on Checkoff of May 13, 1948," 22 LRRM 46 (1948). Thus, there is no violation of Section 302(c)(4) if checkoff authorizations are irrevocable for stated periods and automatically renewed for like periods, as long as employees are accorded an opportunity to revoke their authorizations at least once a year and at the termination of any applicable collective-bargaining agreements. And the limiting of the opportunity to revoke to a reasonable escape period, such as between 20 and 10 days before the expiration of either of these periods, does not require a different result.

Our dissenting colleague's conclusion that Section 302(c)(4) mandates that checkoff authorizations be revocable at will whenever there is no collective-bargaining agreement in effect, and that an attempt to countermand that principle per se violates Section 8, is based on a fundamental misinterpretation of the cases on which she relies. Thoes cases hold that, where an intent that checkoffs be revocable at will following the expiration of a collective agreement is evident from the applicable collective-bargaining agreement or from the checkoff authorizations themselves, it will constitute a violation of the Act for an employer and a union to seek to countermand that intent. Thus, in International Chemical Workers Union, Local 143, AFL-CIO (Lederle Laboratories, Division of American Cyanamid Company), 188 NLRB
705 (1971), the Board found, inter alia, that a union did not violate Section 8(b)(1)(A) when it demanded that dues be checked off during a contractual hiatus period pursuant to unrevoked checkoff authorizations. To be sure, our dissenting colleague is correct in observing that the Board stated that "all of the authorizations became terminable at will after the contract expired." Id. at 707. But she fails to note that the Board also specifically stated that the dispute was one "involving contract interpretation rather than one involving an interpretation and application of the Act." And in Lowell Corrugated Container Corporation, 177 NLRB 169 (1969), the Board adopted the trial examiner's finding that an employer did not violate the Act when it continued to honor unrevoked checkoff authorizations after the expiration of the contract. Moreover, the cases cited by the trial examiner in Lowell Corrugated Container Corporation hold that revocations of checkoff authorizations must be honored after the expiration of a collective-bargaining agreement if, either by their express terms or by implication, it is clear that they were intended to be revocable at will when no contract was in effect.

In agreement with the Administrative Law Judge, we do not believe the facts here warrant finding that Respondents committed an unfair labor practice by the continued deduction of dues after the contract expired and employees attempted to revoke their checkoff authorizations. The employees voluntarily executed checkoff authorizations which expressly contemplated the possibility of periods when no contract would be in effect. The authorizations provided that they would be irrevocable except for two escape periods: one 10-day period ending 10 days prior to the expiration of 1 year from the date the authorization was executed; and one 10-day period ending 10 days prior to the expiration of any collective-bargaining agreement in effect or which became effective after the execution of the authorization. Since the employees did not revoke their authorizations during either of these escape periods, the Union and the Employer were justified in considering the authorizations still valid. Hence, we see no good reason to hold unlawful Respondent Union's request (or the Employer's acquiescence in that request) that the Employer continue to deduct dues pursuant to such outstanding checkoff authorizations. Accordingly, we adopt the Administrative Law Judge's dismissal of the complaints.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaints be, and they hereby are, dismissed in their entirety.

MEMBER MURPHY, dissenting:

The majority is holding that checkoff authorizations here are legally revoked only during the 20 to 10-day period prior to expiration of the collective-bargaining agreement or the anniversary of the checkoff authorizations, as provided therein. Accordingly, they find that revocations made during the contract hiatus period were ineffective and that Respondents did not violate Section 8(b)(1)(A) and (2) and Section 8(a)(1) and (3) of the Act by their failure to honor them. I disagree. I find that, as a matter of law, under the clear mandate of the proviso to Section 302(c)(4) of the Act, a dues-checkoff authorization is revocable when a collective-bargaining contract is not in effect. The appropriate parts of Section 302(c)(4) read:

Sec. 302. (a) It shall be unlawful for any employer or association of employers . . . to pay, lend, or deliver . . . any money or other thing of value--

* * * * *

(2) to any labor organization . . . which represents . . . any of the employees of such employer

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* See Merchants Fast Motor Lines, 171 NLRB 1444 (1968) (authorizations were expressly revocable at any time). Similarly, in San Diego County District Council of Carpenters and Joiners of America (Campbell Industries), 243 NLRB 147, the Board holds today that a union violated Sec. 8(b)(1)(A) when it caused the employer to continue to withhold dues from employees' wages after those employees had successfully resigned from the union. Although resignation ordinarily does not revoke outstanding checkoff authorizations, the Board holds that it did so in that case because the authorizations specifically provided that they were "in consideration of the benefits received as a result of membership in the Union." Cf. Federle Laboratories, supra. Since such language does not appear in the authorizations used in the instant case, our dissenting colleague's contention that our decision is "directly in conflict" with Campbell is plainly wrong.

4 In Bedford Can Manufacturing Corp., 162 NLRB 1428 (1967), and Penn Cork & Closure, Inc., 156 NLRB 411 (1965), enfd. 376 F.2d 52 (3d Cir. 1967), the Board held that a vote to deauthorize a union from maintaining a union-security clause made outstanding checkoff authorizations revocable at will. The Board reasoned that it would not infer that "absent the compulsion of the union-security clause [to pay dues], the employees would have acquiesced in the renewal of their checkoff authorizations." 162 NLRB at 1431. But a similar inference is not warranted regarding a contractual hiatus period.

5 See also The Associated Press, 199 NLRB 1110 (1972), petition for review denied 402 F.2d 662 (D.C. Cir. 1968), where the Board found that an arbitrator's award, holding that authorizations which are valid otherwise do not automatically become revocable at will during a hiatus between contracts, was not repugnant to the policies and purposes of the Act under Spreckling Manufacturing Company, 112 NLRB 1080 (1955).

In her dissenting opinion, our colleague points to a remark by the trial examiner in Lowell Corrugated Container Corporation that "the employee is free to repudiate or revoke his authorization at any time after the contract expired" as supporting her views here. Our colleague fails to note, however, that the cases cited by the trial examiner in connection with this dictum observation plainly do not support such a broad proposition.
The provisions of this section shall not be applicable . . . (4) with respect to money deducted from wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

There is no dispute concerning the facts and briefly they are as follows: The Union and the Company had a bargaining agreement which expired on June 9, 1976. Thereafter, on October 25, 1976, they entered into a succeeding agreement. Despite the second contract's being retroactive to June 10, there was, for purposes here, no agreement in effect between June 9 and October 25. Both of the contracts contained an agency-shop provision requiring in effect that each employee pay union dues as a condition of employment and also a dues-checkoff provision providing for company deduction of dues from the pay of employees who submitted authorization forms. The particular authorizations provide essentially that they would be irrevocable for a year or "until the termination of the collective bargaining agreement now in effect . . . ." They further provided that revocation of authorization could be effected by written notice given not more than 20 nor less than 10 days prior to the expiration of each 1-year period or of the applicable bargaining agreement.

On or about July 27, 1976—that is, during the June 9 to October 25 contractual hiatus period—six employees submitted notices to the Company and the Union stating they were terminating their union membership and were withdrawing authorization for the checkoff of their union dues. As a consequence, the Company stopped deducting dues from the six employees' pay. The Union, by letter dated August 27, objected to the Company's honoring the revocations which it stated was "contrary to the check-off authorizations." More specifically, it contended, as does the majority here, that the revocations were not effective because the forms specified they be submitted "between ten (10) and twenty (20) days prior to the anniversary of the authorization or termination of the existing contract." Since none of the revocations in dispute here was submitted during this period, the Union demanded that checkoff of the six employees' dues be reinstated. The Company, without the affected employees' consent, complied as of September 4, 1976, with the Union's demand.

In dispute here is the effectiveness of the employees' checkoff revocations and the legality of the Company's and the Union's failure and refusal to honor those revocations. The Union's position is, as the facts recited above indicate, straightforward. It basically contends, as it stated in its letter to the Company, that, as the employees did not submit their revocations during the "escape" period just prior to the contract's expiration period, each authorization was renewed for another term as specified by its provisions. The General Counsel contends, however, that the duration of the authorizations was limited by the parties' bargaining agreement to the period of that agreement, that the authorization escape period was too limited and thus in effect not binding on employees, that during the contractual hiatus period the authorizations were terminable at will, and thus the revocations submitted in July were necessarily effective. The Administrative Law Judge—and presumably my colleagues of the majority—concluded essentially that the authorizations were not controlled by or tied to the language of the bargaining contract but were separate agreements to be separately construed; that the provided "escape" period was not unlawfully restrictive; and that, in consequence of the foregoing, the authorizations had, as the Union argues, renewed for another binding term at the time the disputed revocations were submitted. He found no violations in the refusal to honor them. The majority agreed.

I find in agreement with the General Counsel that the authorizations were revocable upon request during the contractual hiatus period. As I indicated above, this result is fully supported by a reading of the plain language of Section 302(c)(4) of the Act which provides, inter alia, that a wage assignment "shall not be irrevocable . . . beyond the termination date of the applicable collective agreement . . . ." No legal exegesis looking for vague implications of the language used or for some veiled legislative intent is necessary here, for the language is clear on its face that once the contract terminates the authorization is revocable. And this rather obvious conclusion is in accord with past Board decisions on the matter.7

(c) The provisions of this section shall not be applicable . . . (4) with respect to money deducted from wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner:

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7 The Company filed no brief in support of its position in failing to honor the revocations.
There is, furthermore, no need to consider, as did the Administrative Law Judge, whether or not an authorization is tied to or controlled by the "applicable collective agreement," for the statute is patently concerned solely with the existence of a current bargaining agreement as a condition precedent to an employee's being held to an irrevocable checkoff. Neither is it necessary to consider if the contract gave rise to, or limits, or otherwise seeks to affect the checkoff, for the matter before the Board concerns a statutory, not contractual, limitation on checkoff. Similarly, that the employees may have, pursuant to the language of the authorizations, been able to revoke their authorizations shortly before the contract expired is of no consequence concerning the present issue, for contractual permission to revoke prior to termination cannot limit an employee's statutory right to revoke after termination, when no contract is in effect. 8

In short, contrary to the position taken by the majority, Section 302 provides on its face that the employees could revoke their authorization after the contract terminated, and that is what they did. Consequently, the Company's failure to honor those revocations compelled the employees to submit to a checkoff they no longer authorized—and had legally canceled and forced the employees as a condition of employment to the Union where there was no lawful union-security provision in effect. By failing to honor the revocations the Company violated Section 8(a)(3) and (1) of the Act, and the Union by causing the Company to fail to honor the revocations violated Section 8(b)(1)(A) and (2). I would so find 9 and issue an appropriate remedial order. 10

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8 Whether or not the limited "escape" period specified in the authorization was legally sufficient is not relevant to the issue under consideration. Nevertheless, for purposes of discussion in this proceeding, I assume that it was.

9 The majority's contrary position seems to be on essential points directly in conflict with its decision in San Diego County District Council of Carpenters and Joiners of America (Campbell Industries), 243 NLRB 147 (1979). There the majority held that a resignation from union membership during a contractual hiatus period automatically canceled outstanding unrevoked authorizations. Here it holds that a revocation in addition to a resignation does not during a contractual hiatus period cancel an outstanding revocation. However, these inconsistencies do not bother the majority.

10 Contrary to the argument of my colleagues, I quite obviously am not contending that Sec. 302 of the Act created a new unfair labor practice, and the difference between us, as they should realize, does not concern any such matter. But I do appreciate that by so confounding our differences they have provided themselves with several really irrelevant cases to cite against my purported position. This is commonly referred to as knocking down strawmen, or perhaps even strawwomen. What I am obviously holding is that the authorizations in dispute were effectively terminated and, thus, that the continued checking off was unlawful. My position is predicated on my conclusion that, once the underlying contract giving rise to authorizations had expired, the authorizations, irrespective of their specific language, became terminable at will. A plain reading of Sec. 302 and of the cases I cite, without the strained exegesis of the majority, seems to me, as I point out above, to soundly support this result. But, alas, I have failed to convince my colleagues of that fact and therein lies our difference.

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Frito-Lay, Inc., herein called Frito-Lay, is a Delaware corporation with its principal office in Dallas, Texas, where it is engaged in the manufacture and distribution of snack food products. During the past year, Frito-Lay, in the course and conduct of its business operations from its Dallas, Texas, facility purchased and received goods and materials valued in excess of $50,000 which were transported to its place of business in Dallas, Texas, in interstate commerce directly from suppliers in States of the United States other than the State of Texas. Frito-Lay is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

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The issue is the validity of the continuation of union dues deductions by the Company from the wages of the six...
named employees, pursuant to the Union's insistence thereon, after the employees had sought to revoke authorizations previously given for such deductions. More specifically, the question is whether the authorizations could, consistently with Section 302(c)(4) of the Act, be made revocable only during a specified and limited period of time, and if so, whether such a limitation on revocation applies during a period of time when a collective-bargaining agreement is not in existence.

B. Section 302(c)(4)

Section 302 of the National Labor Relations Act, inter alia, prohibits the payment of money by an employer to a labor organization, with certain exceptions. Among the exceptions is one, in Section 302(c)(4), permitting an employer to deduct union dues from the wages of an employee.

. . . Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner. . . .

C. The Facts

1. The contracts

Since 1964 the Company and the Union have continuously been parties to collective-bargaining agreements which have included provisions for deductions by the Company of union membership dues from employees' wages, upon written authorization signed by the employees. Two of those bargaining agreements are involved in the present controversy. The first became effective on June 10, 1973, and expired on June 9, 1976; the second was executed on October 25, 1976, retroactive to June 10, 1976, and effective to June 9, 1979. No contract was in existence covering the period between June 9 and October 25, 1976, until the new and retroactive agreement was executed on October 25, 1976.

Both of those contracts contained clauses providing that union membership was not compulsory, but setting up an "agency shop": that is, provision that nonmembers of the Union were required to pay the Union the equivalent of union dues. The Union further agreed to accept into membership, without discrimination, any employee who properly tended application, and to represent all unit employees fairly and equally without regard to whether or not any employee is a member of the Union. The terms of this Agreement have been made for all employees in the bargaining unit and not only for members of the Union, and this Agreement has been executed by the Employer after it has satisfied itself that the Union is the choice of the majority of the employees in the bargaining unit. Accordingly, it is recognized that it is fair for each employee in the bargaining unit, whether a Union member or not, to pay his proportionate share of the cost of representation and assume that share of the obligation along with his receipt of equal benefits contained in this Agreement.

Section 3. In accordance with the policy set forth in Sections 1 and 2 of this Article, each employee who is not a member of the Union shall be required to pay the Union the equivalent of union dues. The Union further agreed to accept into membership, without discrimination, any employee who properly tendered application, and to represent all unit employees fairly without regard to union membership.

In addition, the contracts required the Company to deduct from the wages of employees who executed written authorizations permitting it, monthly dues and initiation fees, and to remit those sums to the Union.

Those various provisions are found in articles 2 and 3 of the 1973-76 contract, and its 1976 successor, which read as follows:

ARTICLE 2

Authorized Dues Deduction

Section 1. The Company shall deduct, as to each employee who shall authorize it in writing in an appro-
2. The checkoff authorizations

The checkoff authorizations signed by employees, including the six involved here, which also included application for membership in the Union, were in the following form:

**DESIGNATION AND CHECKOFF AUTHORIZATION**

I hereby request and accept membership in Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 540, and designate said labor organization as my sole and exclusive representative for the purposes of collective bargaining with my Employer in respect to rates of pay, wages, hours of employment or other conditions of employment.

I further authorize and direct my Employer, [Employer’s Name], at Store No. [Store Number], to deduct from the first pay payable to me each month the initiation fee and the regular monthly Local Union dues for the current (or preceding) month and to remit the same to the Financial Secretary of said Local Union.

This authorization shall take effect as of the date hereof and shall remain in effect until revoked by me as hereinafter set forth. This authorization shall be irrevocable for a period of one year from the date hereof, or until the termination of the collective bargaining agreement now in effect between my Employer and the Union, or, if no such agreement is now in effect, until the termination of any collective bargaining agreement which may hereafter become effective between my Employer and the Union, whichever occurs first.

This authorization shall be irrevocable after the expiration of the shorter of the periods above specified for further successive periods of one year from the date of expiration of such period or until the termination of any collective bargaining agreement which may be effective during such successive periods, whichever occurs first. Revocation of this authorization shall be effective only if I give written notice of such revocation to my Employer with a copy to the Local Union, not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one year or of the applicable collective bargaining agreement between my Employer and the Union, whichever occurs first.

These forms have been continuously in use since 1964.

All six of the employees involved signed such authorizations on or about the following dates: Sherl Carroll, July 28, 1973; Winnie Cole, November 28, 1973; Shirley Faye Green, March 26, 1970; Marie Myrtle Riley, February 10, 1964; Rosalee Salinas, February 27, 1973; Mary Spain, July 24, 1964.

3. The attempted revocations and the result

On or about July 27, 1976, all six of the involved employees attempted to terminate their memberships in the Union and to revoke their dues authorizations, by delivering to the Company and the Union the following written notice, dated July 27, 1976, signed by each of the employees.

We, the undersigned, hereby terminate our membership in Amalgamated Meat Cutters and Butcher Workmen of North America AFL CIO Local Union No. 540 . . . . We no longer authorize the withdrawal of union dues from our paychecks.

Pursuant to that notice, the Company ceased making dues payroll deductions for the six employees on or about July 31, 1976, and made no deductions during the month of August.

Thereafter, by letter dated August 27, 1976, the Union demanded that dues deductions be reinstated for those employees. The Union’s letter stated, in part:

Your action is contrary to the checkoff authorization in your files for each of these individuals.

The letter then quoted the text of the authorizations, and concluded:

The sum of this language is that depending upon which occurs first, notification of termination of checkoff authorization must be forwarded between ten (10) and twenty (20) days prior to the anniversary of authorization or the termination of the existing contract. None of the above referenced individuals have met with this requirement.

On behalf of Local 540 we demand that you deduct and forward union dues from the above referenced individuals.

Thereafter, the Company reinstated the payroll dues deductions effective September 4, 1976, without consulting the employees concerned and absent the execution of new dues deduction authorizations by said employees, and has continued to deduct and remit such dues to the Union on a regular periodic basis. At no time between June 9, 1976, and September 4, 1976, did the Company and the Union negotiate a new collective-bargaining agreement to succeed the one which terminated on June 9, 1976.

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2 Spain’s card is undated, but it is stipulated that she signed the authorization on or about the date given.
D. Contentions

No contention is raised concerning the validity of the employees' termination of their union membership. Nor is issue raised as to their obligation to continue to pay dues to the Union under the "agency shop." Neither issue being presented, no opinion is expressed on them.

The General Counsel contends that, under what he deems to be the Board's interpretation of Section 302(c)(4), the "escape" or "window" provision of the checkoff authorizations limiting revocations to a period of 10 days shortly prior to the expiration of 1 year from the anniversary date, or of an applicable collective bargaining agreement, whichever occurs first, is invalid, and that when the 1973-76 contract expired, the authorizations became revocable at will. Therefore, the contention runs, the Company violated Section 8(a)(1) and (3) of the Act by refusing to honor the revocations after September 3, 1976, and the Union violated Section 8(b)(1)(A) and (2) of the Act by causing the Company to do so.

In addition, the General Counsel contends that, as to Mary Spain, the dues authorization was not binding at all because it does not reflect the date it was signed and/or the employer to whom it is directed.

The Union contends that the employees had a definite and agreed upon means for revoking the authorizations during the escape or window period, failed to avail themselves of it, and the authorizations were therefore automatically renewed for another year beyond June 9, 1976—the expiration date of the 1973-76 contract.

The Company has not filed a brief. Hence its contentions are limited to the denials in its answer that it committed unfair labor practices.

E. Conclusions

Under article 2 of the bargaining contract, and the terms of the authorizations, the Company is required to deduct union dues and initiation fees from the wages of employees who have authorized it, and remit them to the Union.3

The only question presented is the validity of the Company's and the Union's actions respecting the proper interpretation of the authorizations; the construction of the contract is not in question, except in one respect which I find neither relevant nor apt. Thus, the General Counsel urges that since article 2 of the contract only authorizes the Company to deduct dues and fees from wages "for so long only during the period of this Agreement" is in effect as such authorization shall remain in force [emphasis supplied]," the authorizations terminated with the expiration of the contract. I find that contention not sustained. The problem does not involve construction of the contract, an undertaking to which the Company and the Union are the primary parties, but the construction of the authorizations, which are quite independent agreements to which the contracting parties are the Company and the employees. Whether the Union has any interest in the authorizations, such as a third party beneficiary or an assignor, sufficient to give it a right of action in their enforcement, need not be determined, and I express no opinion on it.4 While anyone may choose to waive, or agree not to accept, benefits accruing to him as a collateral consequence of arrangements between other persons, the substantive rights and obligations of the employees and the Company created by the contracts between them cannot be altered by agreements between the Company and the Union.

The General Counsel's relevant contentions are based on two apparent premises: (1) that the limited escape or window period permitting revocation only if notice is given "not more than 20 and not less than 10 days" prior to the expiration date is illegal, and (2) as a consequence all revocations became revocable at will upon expiration of the contract.

The General Counsel cites no relevant authority for that proposition, though he does cite what I deem to be a distinguishable case: N.L.R.B. v. Atlanta Printing Specialties and Paper Products Union [The Mead Corporation], 523 F.2d 783 (5th Cir. 1975), discussed later. Indeed, the contention is contrary to the opinion of the U.S. Department of Justice dated May 13, 1948, referred to supra. In that opinion the Department stated that, in its view, an authorization which declared that it

... shall be automatically renewed... unless written notice is given by me to the Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement... whichever occurs sooner

is "properly a matter for judicial interpretation," but that the proposed form "does not appear to be irrevoicable for a period of more than one year," and therefore,

... we are of the opinion that the check-off under the proposed form of authorization would not appear to constitute a willful violation of subsection (c)(4), and, further, a case arising under this set of facts should not be considered an adequate basis for prosecution. 22 LRRM 46, 47

The escape period provided in the present case appears to track precisely that described in the Justice Department opinion and found not to be an adequate case for prosecution. Of course, that opinion did state that the problem was one "properly a matter of judicial interpretation." But unless there is authority, either in decisions of the Board or of the Courts, establishing the invalidity of limited escape periods under Section 302(c)(4), it would appear to me that the opinion of the Department of Justice has by this time

3 Sec. 302(c)(4) refers specifically to the deduction of "membership dues" only. However, on May 13, 1948, the U.S. Department of Justice, in response to a request from the Solicitor of the U.S. Department of Labor for an opinion as to the legality under Sec. 302(c) of certain types of checkoff authorizations, issued an opinion stating, inter alia, that "initiation fees and assessments, being incidents of membership, should be considered as falling within the classification of 'membership dues.'" 22 LRRM 46, 47. That opinion has not, to my knowledge, been challenged since. In including initiation fees within the deductible sums, art. 2 of the contract, and the authorizations here, are found to be within the latitude permitted by the statute. No contrary contention is raised.

4 See, for example, the arbitrator's statement in the case of The Associated Press, 199 NLRB 1110, 1112 (1972), a case more fully discussed infra, to the effect that a checkoff authorization was "essentially a wage assignment by the employer in favor of the Union."
acquired the status of persuasive interpretation, and that
the authorizations here were therefore automatically re-
newed for another year by the failure of the alleged discrim-
inatees to give notice of revocation between May 20 and
May 30, 1976. Widespread use of the escape requirement
since the issuance of the opinion suggests that it has been
adopted as the law of the market place, and thus not to be
displaced without persuasive reason. If that is so, the Union
did not commit an unfair labor practice by demanding the
resumption of dues payments pursuant to the authoriza-
tions, or the Company by resuming them.

The Board's decision in the case of Atlanta Printing Spe-
cialists, 215 NLRB 237, enf'd. 523 F.2d 783 (5th Cir. 1975),
provides no authority for the General Counsel's contention
to the contrary, though the court's decision contains a state-
ment on which the General Counsel relies.

In that case the authorizations provided for a 15-day es-
cape period immediately preceding the anniversary date
of the authorization or the termination date of the collective-
bargaining agreement, whichever occurred first. The bargai-
ing agreement was scheduled to expire on November 1,
1973. Between October 17 and November 1, 1973, within
the 15-day period, a number of employees gave notice of
revocation of their authorizations. However, in the interim,
on October 13, 1973, the union and employer involved pre-
maturely negotiated another agreement effective October
15. The employer, at the insistence of the union, then re-
fused to honor the revocations. The Board found the ac-
tions of the employer and the union in those respects un-
lawful, on the ground that they had denied the employees
the opportunity, guaranteed by the statute, to terminate the
authorizations at least once yearly. That decision, of course,
is clearly consistent with the purposes and the command
of Section 302(c)(4), and is not authority for a finding of viola-
tion here.

The statement of the circuit court in that case, which the
General Counsel deems supportive of his position, is to the
effect that, "the Union concedes that where there is no col-
collective bargaining contract in effect, dues checkoff autho-
rizations are revocable at will. See Murtha v. Pet Dairy Prod-
ucts Co., 44 Tenn. App. 460, 314 S.W. 2d 185 (1975), [42
LRRM 2850]." (Atlanta Printing at 788). I do not interpret
that statement as a declaration by the court that dues
checkoff authorizations are revocable at will in the absence
of a bargaining agreement, for the court's opinion clearly
discloses its understanding that a valid dues assignment
may be made under Section 302(c)(4) in the absence of a
bargaining agreement. The court's words are, in my opin-
ion, a statement of the union’s position (and not necessarily
one the court adopted), or in the alternative a declaration
that where proper notice of revocation is given, or cannot
be given because of ambiguity or concealment, the authori-
zation is terminable at will—a conclusion quite support-
able.5

In my opinion, the Atlanta Printing case therefore stands,
not for the proposition that upon expiration of a collective-
bargaining contract an authorization under Section
302(c)(4) becomes revocable at will, but rather for the prin-
ciple that premature negotiation of a new contract cannot
operate to extend the period of irrevocability beyond the
statutory period.

Seemingly supportive of the view that the conduct of the
Company and the Union here did not deprive the emplo-
eyees of any rights under Section 302(c)(4), is the case of The
Associated Press, 199 NLRB 1110, pet. for review denied
492 F.2d 662 (D.C. Cir. 1974).

In that case a collective-bargaining contract between the
Wire Service Guild and the Associated Press was due to
expire on December 31, 1968, but was extended by mutual
consent on a day-to-day basis until about January 4, 1969.
A new tentative agreement was reached on January 17,
which was ultimately executed on April 25, retroactive to
January 15. During the period when no collective-bargain-
ing agreement was in effect, a number of members of the
Guild attempted to revoke their authorizations for check-
of Guild dues from their wages. The authorizations relevant
here, in standard form, provided for automatic renewal at
the end of each anniversary period or contract expiration
date, unless written notice of revocation was given to the
 Associated Press and the Guild “not more than thirty (30
days and not less than fifteen (15) days) prior to the applica-
tible expiration date. For purposes here, that date was the
expiration of the contract. The Associated Press honored
the revocations, over protest by the Guild that the escape
period was December 2 to 16. Ultimately, by Court order,
the issue was submitted to an arbitrator pursuant to a con-
tractual clause. The arbitrator held that the authorizations
permitted revocation in the periods December 2 to 16, and
December 2 to 22, but at no other time, and that the at-
temted revocations in January were of no effect. (199
NLRB at 1112.)

Both the General Counsel and the Associated Press con-
tended before the Board that the checkoff authorizations
became terminable at will during the contractual hiatus,
thus rendering the arbitration award “patently repugnant
to basic Board law." (199 NLRB at 1112-13.) The Board
thus summed up the arbitrator's decision:

In dealing with AP's argument that during the hi-
atus the revocation requirements of authorization form
A were of no force and effect, thus permitting the
involved employees to revoke at any time and in any
manner during that period, the arbitrator, in finding no
merit in AP's contention, reasoned that the checkoff
authorization was essentially a wage assignment by the
consequently unable to file a timely notice of revocation. As the court in the
Murtha case said:

In the instant case, neither of the above fixed dates for revocation being
ascertainable, we are of the opinion that authorizations were, during
said period, revocable at will, and that the Company subsequently had
no authority to further deduct union dues..." [42 LRRM 2854]

In the instant case, unlike Murtha and unlike Atlanta, the employees knew
precisely when the contract was to expire, no changes had been made in the
expiration dates, and the employees thus had ample opportunity to revoke
their checkoffs during the escape periods.

6 Other authorizations involved in the case do not bear on the instant
problem.

5 This interpretation of the Atlanta opinion seems reinforced by the facts
of the Murtha case cited by the court, apparently as authority. There the
employees had signed authorizations providing for a 15-day escape period,
between 60 and 75 days before the contract expired, without specifying any
dates. The contract was then extended indefinitely pending negotiation of
a new agreement. Thus, the employees were unable to determine the termina-
tion date of the old agreement, or the dates of the escape period, and were
employee in favor of the Union which existed apart from the collective-bargaining agreement and therefore "survived the expiration of the contract and the employees were bound by its terms as was the employer."

In this regard, the arbitrator further explained that, while termination of the contract, if sooner than a year from the annual revocation date, affords an employee the opportunity to revoke in less than a year, the checkoff by its terms lawfully required that this opportunity be exercised during the specified 15-day period before contract expiration. Finally, the arbitrator found that Section 302(c)(4) of the Act only requires that the checkoff be revocable at least once a year, and that one such time may be measured by the contract's expiration date, if sooner than the annual revocation date; however, the arbitrator held that the statute does not require that the authorization cease upon contract termination.

To the extent relevant here, the Board found the arbitrator's award in Associated Press met the standards set forth in Spielberg Manufacturing Company, 112 NLRB 1080 (1955), for recognition of an arbitrator's award as dispositive of an issue before the Board, and therefore dismissed the complaint in that respect.

Thus, the Board appears to have specifically rejected the argument that during a contractual hiatus an employee may terminate his checkoff at will. While the Board's acceptance of an arbitrator's apparently reasonable findings of fact may not necessarily indicate that the Board would have found the same way as a matter of first impression, an arbitrator's legal premises "patently repugnant to basic Board law" are not acceptable under Spielberg principles, and must consequently be rejected. The Board found the arbitrator's award in Associated Press "not clearly repugnant to the purposes and policies of the Act." (199 NLRB at 1114) It must therefore be said, as a minimum, that the Associated Press case stands for the proposition that it is compatible with the Act to hold as a matter of law, (1) that checkoff authorizations otherwise valid do not automatically become terminable at the will of the employee during a hiatus between collective-bargaining contracts, (2) that escape periods of limited and reasonable duration are authorized by Section 302(c)(4), and (3) that enforcement of authorizations otherwise valid, in circumstances compatible with those principles, is not an unfair labor practice.

In the instant case the escape period, identical with that in Spielberg Manufacturing Company, 112 NLRB 1080, is limited and reasonable, and the alleged discriminatees failed to avail themselves of the opportunity to revoke the authorizations during the escape period. The authorizations were therefore renewed according to their terms for the appropriate statutory period.

On balance, then, I conclude that the General Counsel's contentions are not sustained. Decisions by the General Counsel dealing with requirements for maintenance of union membership or their application are inapposite to the present problem. No question of maintenance of such membership, or of compliance with the agency shop requirement of the contracts, is raised by the pleadings; the issues revolve solely around rights and obligations arising from dues checkoff authorizations under Section 302(c)(4). A dues checkoff clause is not a union-security device. Shen-Mar Food Products, Inc., 221 NLRB 1329, 557 F.2d 396 (4th Cir. 1977); N.L.R.B. v. Atlanta Printing Specialties, supra at 786-787. There was no contractual requirement for union membership as a condition of employment. Hence, authorities dealing with such requirements, or other union security, disciplinary, or union activity problems, are inapplicable.

Additional theory as to Spain

Concerning employee Mary Spain, the General Counsel argues that because her checkoff authorization does not bear on its face a date of execution or the name of an employer, it is in essence a nullity, since no period of expiration can be deduced from it, and no employer named to whom it can be presented to be honored. However, the stipulation establishes the date Spain signed the authorization as about July 24, 1964, and satisfactorily permits the inference that the Company was the intended employer.

Thus, Spain and the other five alleged discriminatees signed and delivered to the Company and to the Union the July 27, 1976, statement terminating their membership in the Union, and declaring that they no longer authorized the withdrawal of union dues from their paychecks. In these circumstances, I believe it can be safely concluded that the intended employer in Spain's authorization was the Company, that the authorization was given to the Company as authority for the deduction of Spain's dues from her wages, that it has continuously been used for that purpose except for the hiatus period in August and September 1976, and that there is no evidence or claim that the intended employer is anyone other than the Company. I therefore find that Spain's authorization complies with the requirements of the statute. What the result would be if the evidence did not disclose the date the document was executed, or left in doubt the name of the employer, need not be determined.

On the basis of the facts adduced I find no part of the complaint sustained by the evidence.

Upon the foregoing finding of fact and conclusions, I hereby issue the following recommendation:

ORDER

I recommend that the complaint be dismissed in the entirety.

1. It may be noted that a somewhat similar contention as to the dates of authorizations, made in N.L.R.B. v. Atlanta Printing Specialties, 523 F.2d 783, 785, was termed "immaterial" by the court of appeals, which said:

It is immaterial that the original execution date of each authorization is unknown, since all were renewed at least once yearly, and had therefore either been executed or renewed during the 1970-73 collective bargaining agreement. The legal consequences of renewal are exactly the same as execution of a new authorization. Therefore, since the authorizations, of which the revocation provision is a subsidiary part, were executed or renewed during the 1973 collective bargaining agreement, that agreement is the "applicable" one whose expiration date provides an escape period for revocations.

A similar conclusion may thus be applicable here.

2. In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."