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UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO : Francis E. Dowd, Regional Director
Region 12

DATE: July 17, 1986

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

518-4050-3375-6000
518-4050-6700

SUBJECT: Gross Industrial Construction Company
Case No. 12-CA-11985

This Section 8(a)(1),(2), and (3) case was submitted to Advice on the issue of whether certain clauses regarding Union membership and check-off authorization are unlawful on their face.

FACTS

The Employer and the USWA are parties to a collective bargaining agreement which expires on December 31, 1986. Local Union No. 14614, USWA (the Union), although not a party to the collective bargaining agreement, apparently administers the contract. In April 1986, the Employer commenced work in Lakeland, Florida, pursuant to a contract, to tear down and rebuild furnaces at an Owens-Illinois plant. For this one month job, the Employer brought 20-25 employees with it and hired an additional 45 to 55 laborers through the local office of the State Employment Service. On the first day of work, the Employer gave the laborers a packet of forms which included a combination Union membership/dues checkoff authorization card, and told them to fill out and sign the forms.1/ Apparently the Employer took this action pursuant to Article III-"Union Shop and Check-Off" of the collective bargaining agreement which provides, inter alia:

> Section 2. Union Membership
>
> A. Each new employee shall sign an Application Card for membership in the Union in a form agreed to in writing by the Company and the Union. The Company shall furnish the Application Card for membership in the Union to the employee, at the time of his employment. A copy of such card shall be furnished to the Union. Such Application Card shall not become effective until

1/ The Region has concluded that these actions violated the Act, and has not submitted this issue to Advice.

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the expiration of thirty (30) days after the date of his employment.(emphasis added)

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Section 3. Check-Off

A. The Company will suggest that each new employee sign a furnished voluntary Check-Off Authorization Card in a form agreed to in writing by the Company and the Union. A copy of such card shall be furnished to the Union. Such Check-Off Authorization Card may be effective immediately or may, at the option of the employee, not become effective until the expiration of thirty (30) days after the date of his employment.(emphasis added)

A representative of USWA states that the above provisions are identical to those contained in USWA's master agreements and standard contracts all over the country and that the language has never been challenged before.

ACTION

We conclude that the first underlined portion of the membership clause of the collective bargaining agreement is unlawful on its face in that it requires that an employee sign a Union membership card. Although the clause does not expressly say that such signature is a condition of being hired, an ordinary reasonable employee is likely to draw that inference. Further, although the application does not become effective for 30 days, the law is clear that full membership can never be required as a condition of employment. 2/ We conclude further, that the second underlined portion of the membership clause is unlawful in the context of the first portion. Although there may be nothing inherently unlawful in the Employer's furnishing the Application Card to its employees, the second portion is part of the means of carrying out the requirements of the first portion. That is, the Employer's furnishing the card further drives home to employees the impression that signing a card is a condition of being hired by the Employer. Finally, we conclude that the underlined provision in the "Check-Off" clause is not unlawful on its face. Although an employee has a Section 7 right to pay dues

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2/ Union Starch & Refining Company, 87 NLRB 779 (1949).

via checkoff or via some other means, there is nothing unlawful in "suggesting" to employees (i.e. no threats and no promises) that the employees exercise the Section 7 right in a given way. 3/

Accordingly, complaint should issue, absent settlement, alleging that the underlined provisions of the membership clause are facially violative of the Act.

H.J.D.

3/ See Section 8(c). Of course, those employees who are coerced into membership by virtue of the unlawful membership clause would have no dues obligations. However, those employees, if any, who are voluntary members, can choose to pay dues by checkoff. There is nothing unlawful in an employer's "suggesting" that the employee do so. It should be noted that Florida is a right to-work state, but the violation herein does not depend on this fact.