

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 58, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS (IBEW), AFL-CIO,

Respondent

and

Case 07-CA-149555

RYAN GREENE, An Individual,

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

Counsel for the General Counsel Robert Buzaitis respectfully submits this brief to
Administrative Law Judge David I. Goldman, who heard this case on July 30, 2015, in Detroit,
Michigan.

I. ISSUE PRESENTED

*Does Respondent's October 1, 2014 policy regarding resignations and dues check-off violate
Section 8(b)(1)(A) of the Act?*

Counsel for the General Counsel asserts this question should be answered in the
affirmative.

II. FACTS

Respondent is a labor organization representing over 4000 members working in the
construction field and about 200 members working in manufacturing, broadcast, and municipal
fields. (GC Ex. 1(g), ¶ 5 and 1(i), ¶ 5; Tr. 30-31.) The vast majority of the construction field
members, called "A" members, work under three multi-employer contracts covering about 217
employers. (Tr. 32-33.) The multi-employer contracts were in effect prior to when Michigan's
right to work law took effect and expire in June 2016. (Tr. 34.) The non-construction field

members, called “BA” members, work for about 30 employers who have standalone collective bargaining agreements with Respondent. (Tr. 33-34.) “A” members pay higher quarterly dues to the International than “BA” members.

On about October 1, 2014, Respondent issued a policy regarding resignation and dues checkoff, which reads in pertinent part as follows:

IT IS HEREBY RESOLVED that any member that desires to opt out of membership or dues deduction must do so in person at the Union Hall of IBEW Local 58 and show picture identification with a corresponding written request specifically indicating the intent of the member.

IT IS FURTHER RESOLVED that any member that feels that appearing in person at the Union Hall of IBEW Local 58 poses an undue hardship may make other arrangements that verify the identification of the member by contacting the Union Hall.

(GC Ex. 2; Tr. 27, 34.)

The policy was instituted by Michael Richard, Respondent’s business manager and financial secretary for the past three years. (Tr. 30, 34.) It was communicated to Respondent’s staff, elected officers, and stewards. (Tr. 34.) It was also posted on the message board at the Union Hall. (Tr. 34.) Respondent’s constitution is silent regarding requirements for member resignations. (Resp. 1.)

Richard testified the policy was implemented well in advance of June 2016 “in anticipation of the [multi-employer] contracts expiring . . . should a member desire to resign once the union security drops out of the three main contracts.” (Tr. 35.) He described it as a “clear-cut, simple way for a member who so desired to resign membership.” (Tr. 35.) Richard testified that he decided a policy was needed when he thought of a 2007 or 2008 incident wherein he tried to remove himself from an Indianapolis local’s traveler book and was told he needed to appear in person because it had an incident where someone called and removed another individual from

the book. (Tr. 36, 52.) Respondent has not had a single incident of fraud or falsification related to resignation of membership or requesting to revoke dues check-off. (Tr. 44.)

Richard testified Respondent would accept “any reasonable method,” including answering the telephone when Respondent calls the member. (Tr. 39-40.)

Since the policy was implemented, only Ryan Greene, the Charging Party, has attempted to, and did, resign. (Tr. 40, 54-55.) When Respondent received Greene’s resignation letter, Kenneth Rosinski, Respondent’s business representative, called him to determine if Greene sent the letter. (Tr. 56-57.) Rosinski admitted it was not a burden to place the phone call. (Tr. 61.)

The October 1, 2014 policy is still in effect. (Tr. 27.)

III. ANALYSIS

Section 7 of the Act guarantees employees the right to resign from a labor organization. *Marlin Rockwell Corp.*, 114 NLRB 553, 561-62, 566 (1955). “Section 8(b)(1)(A) protects this right by making it an unfair labor practice for a labor organization ‘to restrain or coerce ... employees in the exercise of the rights guaranteed by Section 7’” *Bldg. Material & Dump Truck Drivers Local 36*, 266 NLRB 1057, 1059 (1983).

A union may not lawfully restrict the right of a member to resign at any time. *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984); *Pattern Makers’ League of North America v. NLRB*, 473 U.S. 95 (1985); *Newport News Shipbuilding and Dry Dock Co.*, 253 NLRB 721 (1980). A member may resign at will from the union so long as that desire is clearly communicated. *Sheet Metal Workers Local 18(Rohde Bros.)*, 298 NLRB 50, 52 (1990); *Electrical Workers, Local 66*, 262 NLRB 483, 486 (1982), citing *NLRB v Granite State Joint Board. Textile Workers of America, Local 1029 (International Paper Box Machine Co.)* 409 U.S. 213 (1972).

A union rule is valid only 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.” *Scofield v. NLRB*, 394 U.S. 423, 430 (1969).

Respondent asserts the October 1 policy guards against fraudulent resignation notifications while admitting that such a situation had not occurred in the past. But even assuming that such a policy reflects a legitimate union interest, the terms of the policy conflict with extant labor law. “[A]n employee may communicate his resignation from membership in any feasible way and no particular former [sic] method is required so long as he clearly indicates that he no longer wishes to remain a member.” *Electrical Workers IBEW Local 1547 (Homer Elec. Assoc.)*, 280 NLRB 1362, 1363 (1986); *Local 66 IBEW (Houston Lighting and Power Co.)*, 262 NLRB at 492 (1982); *Local 80 Sales, Service and Allied Workers’ Union (Capitol-Husting Co., Inc.)*, 235 NLRB 1264, 1265 (1978)). The Board does not require resignations be in writing. See, e.g., *Communications Workers of America, AFL-CIO Local 1127 (New York Telephone Company)*, 208 NLRB 258, 262-263 (1974); citing *NLRB v Granite State Joint Board*, supra, and *Machinists Lodge v NLRB*, 412 U.S. 84 (1973); *Sheet Metal Workers Local 18 (Rohde Bros.)*, 298 NLRB 50, 52 (1990). An oral resignation must be sufficiently clear and unequivocal to show intent to resign. *Local 340, International Brotherhood of Operative Potters, AFL-CIO, (Macomb Pottery Company)*, 175 NLRB 756, 760, fn. 14 (1969); *Marlin Rockwell*, 114 NLRB at 562.

A Union’s refusal to accept resignations sent by telex¹ was found unlawful. *IBEW Local 1547*, 280 NLRB at 1363. In *IBEW Local 1547*, the Board rejected the Union’s argument that

¹ “A switched network of teleprinters similar to a telephone network, for the purposes of sending text-based messages.” <https://en.wikipedia.org/wiki/Telex>, September 10, 2015.

telex “lacks the guarantees of receipt and verification crucial to a determination that an individual has voluntarily withdrawn membership.” *Id.* Instead, the Board stated that “[h]aving received the messages identifying the employees as the senders, the presumption arises that this in fact was the case.” *Id.* Similarly, in the instant case, Respondent asserts the policy is needed to verify identity. Instead, when a resignation is received, it should be presumed to be from the individual and, if necessary, Respondent can take the steps to confirm.

Respondent argues its policy is a balancing between the union’s interest and the Act, citing *UAW Local 449 v. NLRB*, 865 F.2d 791 (6th Cir. 1989). The Court enforced the Board’s decision to strike down provisions of the union’s constitution which required a member to be in good standing in order to resign, but did not enforce the expunging of a requirement that the resignation be in writing and sent to a designated union officer. This case is distinguishable from the instant case for three reasons. First, the Board decides whether to “acquiesce in the contrary views of a circuit court of appeals or whether, with due deference to the court's opinion, to adhere to its previous holding until the Supreme Court of the United States has ruled otherwise.” *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616 (1963). Second, the instant case was fully litigated and it involves more than a requirement involving written resignation. Third, the Court stated the provision was not enforced because “[n]either the ALJ nor the Board discussed the requirement [, and] [o]n its face, we can discern nothing in this requirement that could reasonably be construed as restraining or coercing members in the exercise of their § 7 rights.” *Id.* at 797.

The Board has stated that “any effort to equate the institutional interests of a union with the statutory rights of employee is inappropriate.” *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1334 (1984). To be legitimate, “the union’s interests simply cannot

negate or otherwise overcome fundamental Section 7 rights.” *Id.* Thus, while Respondent claims this policy is “clear-cut” and “simple,” even if true, that does not outweigh employees’ Section 7 rights.

Respondent’s true purpose appears unrelated to its stated purpose to verify the identity of the resigning member. This can be inferred by the fact that Respondent stated Michigan’s “Right to Work” law does not apply to the vast majority of its members until June 2016, when its three main contracts expire, it created the policy “in anticipation of contracts expiring.” (Tr. 35.) Also, it did not apply the policy for the one resignation that did occur. Thus, the true purpose may be expressed as the Board did in *Teamsters Local 439 (Loomis Courier Service)*, 237 NLRB 220 (1978) regarding a 30-day waiting period for resignations to be effective:

[A]bsent convincing evidence to the contrary, it is a fair inference that the purpose behind the aforesaid 30-day waiting period is to provide the Respondent with an opportunity to pressure its members to change their mind about resigning and to continue to support the Union.... I am convinced that the requirement that a union member wait 30 days before his or her resignation becomes effective impinges upon an employee's statutory right to resign from the Union and is broader than necessary to serve the Union's interest [and, therefore] ... is an unreasonable restriction upon a member's right to resign.

Id. at 224.

Respondent’s policy requirement to appear in person, show a picture identification, and submit the request in writing or making other arrangements constitutes an impediment to withdrawing membership. Thus, Respondent’s policy violates the Act.

Respondent’s policy is also unlawful as it relates to dues check-off.

Section 302(c)(4) of the Labor Management Relations Act states as follows:

With respect to money deducted from the 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.

29 U.S.C. § 186(c)(4). The Board has approved window periods “between 20 and 10 days before” the anniversary date of the authorization. *Frito Lay, Inc.*, 243 NLRB 137, 138 (1979).

Revocability terms are lawful provided they do not “constitute such an impediment to an employee’s freedom of revocation as to defeat a contract as a bar” *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). Cf. *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); *Newport News Shipbuilding and Dry Dock Co.*, 253 NLRB 721 (1980).

Respondent’s policy requirement to appear in person, show a picture identification, and submit the request in writing or making other arrangements combined with a short window period constitutes an unlawful impediment.

Thus, Respondent’s policy violates the Act in relation to revocation of dues check-off.

Respondent’s maintenance of the policy, even if not applied, violates the Act

Respondent states it has not applied the policy to date. The application of the policy to date is irrelevant. The mere maintenance of an invalid policy violates the Act. *Newspaper Guild*

Local 3 (New York News), 271 NLRB 1251, 1252 n.9 (1984); *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311, 311 (1983).

Based on the above, Respondent is unlawfully maintaining a resignation and revocation of dues check-off policy.

IV. CONCLUSION

For the reasons advanced above, the undersigned respectfully requests that the Administrative Law Judge find Respondent violated the Act and order it to take the remedial actions outlined in Appendix A.

Dated at Detroit, Michigan on September 14, 2015.

/s/ Robert Buzaitis

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CERTIFICATE OF SERVICE

I certify that on September 14, 2015, I served copies of the Counsel for the General Counsel's Brief to the Administrative Law Judge on the following parties of record electronically:

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/s/ Robert Buzaitis
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Counsel for the General Counsel

APPENDIX A

We are posting this Notice to inform you of your rights guaranteed by the National Labor Relations Act.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT restrain or coerce employees and members in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act by giving force or effect to a policy requiring that unit employees appear in person at our local union office and present photo identification along with a corresponding written request if they seek to resign their membership or to revoke their dues check-off authorization.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment authorized in Section 8(a)(3) of the Act.

WE WILL rescind the restriction requiring unit employees appear in person at our local union office and present photo identification along with a corresponding written request if they seek to resign their membership or to revoke their dues check-off authorization, inform unit employees we have done so and make whole any affected employees.

WE WILL recognize as non-members any employee whose resignation was denied since October 7, 2014, pursuant to our unlawful restrictions requiring employees seeking to resign their membership or revoke their dues check-off authorization to appear in person at our local office and present photo identification along with a corresponding written request, and discontinue seeking dues from said individuals.

WE WILL make whole any affected employees, for any financial loss, as a result of these unlawful restrictions regarding the withdrawal of union membership and/or the revocation of a dues check-off authorization.

Local 58, International Brotherhood of Electrical Workers
(IBEW), AFL-CIO
(Labor Organization)

Dated: _____

By: _____
(Name) (Title)