

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

LOCAL 58, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS (IBEW), AFL-CIO
(PARAMOUNT INDUSTRIES, INC.)
Respondent,

and

Case No. 07-CB-149555

RYAN GREENE, an Individual,
Charging Party.

CHARGING PARTY'S POST-HEARING BRIEF

Pursuant to NLRB Rules & Regulations Section 102.42, Charging Party Ryan Greene, by and through his undersigned attorneys, files this post-hearing brief in support of his unfair labor practice charge challenging the International Brotherhood of Electrical Workers Local 58's ("Local 58") October 1, 2014 "Policy Regarding Procedure for Opting Out of Membership Rights, Benefits, and Obligations" ("Policy"). (GC Ex. 2).

I. INTRODUCTION

In 2014, Local 58's collective bargaining agreements ("CBA") with several employers first began to expire; and in 2016, most of its collective bargaining agreements governing the majority of its members will have expired. When those CBAs expire, Local 58's "union security" clauses no longer are legal due to Michigan's recently enacted Right to Work law. Thus, when all of Local 58's CBAs expire, over 4,000 Local 58 members and compelled dues payors will be free to resign their memberships, revoke their dues checkoff authorizations, and/or cease paying a cent in compulsory dues or fees. Upon the CBAs' expiration, the employees' choice to join or support Local 58 will be voluntary, and 4,000 of them will have the unfettered

right under Sections 7 and 14(b) of the National Labor Relations Act (“NLRA”), 29 U.S.C. §§ 157 and 164(b), to leave Local 58.

Frightened that many of its members and compelled dues/fee payors might choose to resign and cease all financial support,¹ one Local 58 official unilaterally created the official Policy, which was calculated to threaten, restrain, and coerce members in the exercise of their unfettered right to resign at will and/or revoke their checkoff authorizations.

The sum and substance of this case is that Local 58’s Policy creates an unwarranted and unlawful hindrance to employees’ exercise of their Section 7 rights to refrain. Even assuming, *arguendo*, that Local 58’s Policy does not otherwise impair the policy of voluntary unionism Congress has embedded in the labor laws, Local 58’s purported justifications for the Policy are irrelevant and insufficient because the Policy’s clear effect is to restrict 4,000 employees’ exercise of their Section 7 rights. Indeed, the record demonstrates that other alternatives exist that would allow Local 58 to achieve its purported goals, while being much less burdensome on individual employee rights.

II. STATEMENT OF THE FACTS²

Local 58 is the collective bargaining representative for over 4,000 employees in Michigan, who are classified as either A or BA members. (Tr. 30–33). BA employees are employed in manufacturing, broadcasting, maintenance, and municipal work, and are governed by stand-alone CBAs with approximately thirty employers. (Tr. 31–34). Michigan’s recently enacted Right to Work law applies to the majority of those agreements. (Tr. 34). The A

¹ “Membership Comparison By State,” Secretary-Treasurer/Independent Auditors Financial Reports presented to the Representative Assembly, NEA, July 2015, p. 47; *see also* Molly Back, “After Act 10, WEAC down to half its strength,” Wisconsin State Journal (Feb. 23, 2015), http://lacrossetribune.com/news/local/after-act-weac-down-to-half-strength/article_6ad3c08f-b65a-5d35-aedf-0483024d1355.html.

² The facts set forth herein, and relied upon, are those testified to by the witnesses at the hearing or the exhibits entered into the hearing record. The purported “facts” opposing counsel mentioned in his lengthy opening statement were not admitted into the record either by the testimony of witnesses or exhibits, and are not, and cannot be, relied upon in support of any argument. (Tr. 12–21).

employees primarily are electricians and sound and communication technicians in the construction field, and are governed by 1 of 3 main multi-employer CBAs covering approximately 217 employers. (Tr. 31–34). Because those multi-employer contracts preceded the enactment of the Right to Work law, their “union security” provisions remain in effect until they expire in June 2016.³ (Tr. 34). The 4,000 A members pay higher union dues than do the several hundred BA members; and receive IBEW International pension and death benefits, which the BA members do not receive. (Tr. 32–33, 38–39).

On October 1, 2014, Michael Richard, Local 58’s business manager and financial secretary, unilaterally created and issued the Policy, which requires employees who wish to resign or revoke their dues checkoff authorizations either to appear in person at the union office bearing photo identification and a written letter specifically indicating their intent, or to establish a claim of undue hardship that might allow them to make other arrangements by contacting Local 58’s office. (Tr. 30, 34, 36; GC Ex. 2). The Policy, which restricts employees’ right and ability to resign and revoke at will, was created in anticipation of the new Right to Work law applying to the vast majority of Local 58’s members, allegedly to provide a “clear-cut, simple way” for members to resign. (Tr. 30, 34–35).

Mr. Richard’s issuance of the Policy was not based upon any problems Local 58 had experienced with forged or fraudulent resignation or revocation letters. (Tr. 44). Indeed, Mr. Richard acknowledged that Local 58 has “never had a single example of fraud or falsification” with regard to one of its member’s resignations or revocations. (Tr. 44–45). Rather, Mr. Richard unilaterally created the Policy based on a single idiosyncratic personal experience he

³ Existing contracts were “grandfathered” under the Michigan Right to Work law. MICH. COMP. LAWS ANN. § 423.14(2). However, once those existing contracts are extended or renewed or a new contract takes effect, which occurs in 2016 for the CBAs covering Local 58’s A members, employees become fully covered by the Right to Work law and are free to choose for themselves whether to join or support Local 58. *Id.*

had with a hiring hall at an unnamed local in Indiana. (Tr. 34–36, 46). In 2007 or 2008, Mr. Richard allegedly contacted a hiring hall in Indiana with which he had been affiliated. (Tr. 35, 52). He requested that his name be removed from the traveling list, which the Indiana hiring hall allegedly refused to do based upon a prior experience that hall had with someone’s name being improperly removed who had not requested its removal. (Tr. 35–36, 44). As a consequence, that Indiana union required individuals to drive to Indianapolis and present their identification before the hall would remove their names from the list. (Tr. 36).

Based on this one occurrence with an unnamed Indiana hiring hall⁴ six or seven years prior, Mr. Richard suddenly chose to create and implement Local 58’s Policy requiring members to appear in person with photo identification, or to make other arrangements after establishing an undue hardship, in order to resign and/or revoke their dues deduction authorization. (Tr. 44, 46, 52). Mr. Richard unilaterally created this Policy without consulting with, or obtaining approval from, anyone else in Local 58, including the bargaining unit members who would be bound by it. (Tr. 30, 34–36, 46). Moreover, Local 58 made no concerted effort to distribute this Policy, once enacted, to members and represented employees. (Tr. 46–49; 58–61). For example, Kenneth Rosinski, Local 58’s business representative since 2012, testified that he neither distributed the Policy to the employees in any of the six bargaining units he covers, nor instructed any shop stewards beneath him to distribute the Policy to the bargaining unit members in their facilities. (Tr. 56, 60).

The Policy is not limited to any one bargaining unit or workplace, and states, in relevant part:

WHEREAS members have the ability to opt out of membership in the Union and applicable dues deduction agreements consistent

⁴ Mr. Richard testified that an individual’s membership or nonmembership in the union was not relevant to whether that individual could use the hiring hall. (Tr. 45–46).

with the requirements of applicable agreements or authorizations and relevant state and federal laws.

....

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.

IT IS FURTHER RESOLVED that any other requirements in any other agreement, authorization or notices of IBEW Local 58 or the International Union of IBEW remain in place.

(GC Ex. 2).

After the Policy was enacted, Charging Party Ryan Greene sent a letter of resignation and revocation to Local 58. (Tr. 40, 57). Aware of the Policy when he received Mr. Greene's resignation letter, Mr. Rosinski called Mr. Greene on his cell phone to confirm that he wanted to resign his membership in Local 58. (Tr. 56–57). Mr. Rosinski testified that Local 58 maintains accurate records of members' addresses and phone numbers,⁵ and that it was not a burden for him to pick up a telephone and call Mr. Greene to verify the authenticity of his resignation letter. (Tr. 60–61).

III. ARGUMENT

A. Legal Standard

The United States Supreme Court has held NLRA Section “8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy

⁵ Local 58 may try to claim that it has some difficulty maintaining accurate membership records (Tr. 60, lines 19–21; Tr. 61–62), but it is clear under Board law that unions have a broad right to demand, and receive, employees' contact information from their employers. *See, e.g., Tenneco Auto., Inc.*, 357 NLRB No. 84, at 2–4 (Aug. 26, 2011).

Congress has imbedded 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); *see also Pattern Makers’ League of N. Am. v. NLRB*, 473 U.S. 95, 104 (1985) (“Section 8(b)(1)(A) allows unions to enforce only those rules that ‘impai[r] no policy Congress has imbedded in the labor laws” (quoting *Scofield*, 394 U.S. at 430)).

“Section 7 of the Act . . . grants employees the right to ‘refrain from any or all [concerted] . . . activities” *Pattern Makers’*, 473 U.S. at 100 (alteration in original). Section 8(b)(1)(A) then “provides that a union commits an unfair labor practice if it ‘restrain[s] or coerce[s] employees in the exercise’ of their § 7 rights.” *Id.* at 101 (alterations in original) (footnote omitted). “[T]he vitality of § 7 requires that the member be free to refrain in November from the actions he endorsed in May.” *Id.* at 104 (quoting *NLRB v. Textile Workers*, 409 U.S. 213, 217–18 (1972)).

In analyzing Congress’s policy regarding an employee’s right to refrain, “[t]he Board has found union restrictions on the right to resign to be inconsistent with the policy of voluntary unionism implicit in §8(a)(3),” and that “[r]estrictions on the right to resign curtail[] . . .” the employee’s § 7 right to refrain. *Id.* at 104 (footnote omitted). Because the *Scofield* test is conjunctive, a union rule that restrains or coerces employees in the exercise of their right to refrain is, *per se*, inconsistent with the policy of voluntary unionism embedded in the nation’s labor laws.

B. Local 58’s Policy Facially Impairs Congress’s Voluntary Unionism Policy Firmly Embedded in the Labor Law by Violating Bargaining Unit Employees’ Section 7 Rights.

Local 58’s requirement that a member must appear in person with photo identification and a “written request specifically indicating the intent of the member,” or establish an undue hardship in order to be allowed to make other arrangements, restrains and coerces employees in

the exercise of their Section 7 rights, and consequently impairs the policy of voluntary unionism Congress has embedded in the labor laws. (GC Ex. 2). Since the Policy fails to meet one requirement of the *Scofield* test, no further inquiry is needed into whether the Policy is legitimate or reasonably enforced against union members.

1. There is no talismanic method for membership resignations and checkoff authorization revocations.

The cases decided both before and after *Pattern Makers*’ establish that roadblocks to employees’ exercise of their statutory right to resign are not permitted. 473 U.S. at 102–107. Indeed, the federal courts and the Board have long held that there is no talismanic method employees must use in order to resign, revoke their checkoff authorization, or otherwise effectively sever ties to the union. See e.g., *Anheuser-Busch, Inc. v. Int’l Bhd. of Teamsters, Local 822*, 584 F.2d 41, 43 (4th Cir. 1978) (noting the Supreme Court interpreted a similar federal labor law provision allowing checkoff authorization revocations at the expiration of a collective bargaining agreement to mean “that the union and the employer could not require the employees to use a form supplied by the union to revoke a checkoff authorization[,]” and explaining “the Court emphasized that the employees’ freedom of decision, which the statute was intended to assure, should not be ‘eroded in the name of procedure, or otherwise’” (quoting *Felter v. S. Pac. Co.*, 359 U.S. 326, 334 (1959))); *Elec. Workers, Local 66 (Houston Lighting & Power Co.)*, 262 NLRB 483, 485 (1982) (footnote omitted) (holding “a member may resign from the union at will so long as the desire to resign is clearly communicated,” and “such communication may be made in any feasible way and no particular form or method is required”).

In *Electrical Workers, Local 66*, the employee merely told the union that he wanted to “discontinue his membership,” and the Board deemed that sufficient to resign. 262 NLRB at 485. Contrast this with Local 58’s ominous demand that the resignee/revokee must not only

appear in person with photo identification, but must also bring a “corresponding written request specifically indicating the intent of the member,” or make other arrangements after establishing an undue hardship. (GC Ex. 2).

In *Local 128, UAW (Hobart Corporation)*, the Board held that an employee’s failure to follow a union’s “mail service” rules in submitting a resignation did not invalidate his resignation since the union actually received it. 283 NLRB 1175, 1177 (1987). More importantly, the Board paraphrased an argument made by the General Counsel and stated that the language of its recent cases “militates against any restrictions on the manner of withdrawal, so long as the resignation is clear and unequivocal.” *Id.* at 1176.

Similarly, in *Local 54, Hotel & Restaurant Employees (Atlantis Casino Hotel)*, the employees’ letter to the union stated, “I am changing my membership status . . . from that of a ‘full’ member to that of a ‘financial core’ member. . . . I am not resigning from the union, I am only changing my membership status.” 291 NLRB 989, 990 (1988), *enforced*, 887 F.2d 28 (3d Cir. 1989). The Board and Third Circuit had little trouble recognizing that communication as a valid resignation, even though the employees stressed that they “were not resigning from membership.” *Id.* at 992.

In reviewing Local 58’s Policy, the Board should continue to recognize that employees’ clear and unequivocal statements of resignation and revocation to the union are, *per se*, sufficient, without more, to effectuate their resignation and dues checkoff revocation. Notwithstanding the NLRA’s protection of employees’ unfettered right to resign and revoke, *Pattern Makers’*, 473 U.S. at 101, Local 58’s business manager unilaterally enacted a policy declaring written resignations insufficient if mailed, faxed, or e-mailed. Local 58’s requirement that employees must do considerably more than send a letter runs afoul of the “no talismanic

method” required and the policy of voluntary unionism embedded in the labor laws. The Policy, in fact, “only make[s] it difficult for member[s] to exercise [their] right to withdraw from the union.” *Int’l Union, United Auto, Aerospace & Agric. Implement Workers of Am. v. NLRB*, 865 F.2d 791, 797 (6th Cir. 1989).⁶

2. Local 58’s requirement that members must appear in person to resign and revoke their checkoff authorization or make other arrangements is unduly restrictive of employees’ right to resign and revoke at will.

Local 58’s Policy illegally requires a heightened showing by members of their intent to resign and revoke the checkoff authorization. Not only does the Policy require employees to appear in person and present photo identification and a letter, it requires the writing to specifically indicate the members’ intent. If members find these requirements too burdensome, the Policy requires that they establish that appearing in person is an undue hardship and then make other arrangements to prove the veracity of their intent to resign and/or revoke. Such unduly restrictive requirements cannot be allowed to remain.

In *Sheet Metal Workers’ International Ass’n, Local No. 18 (Rohde Brothers)*, the union’s constitution mandated that resignations were effective only if made in writing and mailed to the financial secretary. 298 NLRB 50, 51–52 (1990). The Board affirmed an ALJ’s decision

⁶ In *International Union, United Auto, Aerospace & Agricultural Implement Workers of America v. NLRB*, the Sixth Circuit, in dictum, stated that requiring a member’s resignation to be in writing and sent to a designated local union officer did not violate the NLRA’s right to refrain. 865 F.2d at 797 (dictum). However, the Court had no jurisdiction to address those issues since “[n]either the ALJ nor the Board discussed the requirement that a member’s resignation be in writing and sent to a designated officer of the local union.” *Id.* Thus, it is not binding here. See NLRA Section 10(e) (“[n]o objection that has not been urged before the Board . . . shall be considered by the court.”); see also *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665 (1982).

Even if the Sixth Circuit’s dictum were a proper statement of the law, which it is not, it is clear that a union directive that resignation letters be sent to a designated official is far less intrusive and burdensome than one requiring employees to appear in person at the union’s office with photo identification and a letter, or to establish an undue hardship, in order to resign or revoke. Given the burden caused by an “appear in person with a photo ID” policy, it is no wonder the AFL-CIO has been among the loudest critics of “voter ID” policies that many state legislatures are enacting. See Kenneth Quinnell, *25 Reasons Why Voter Identification Laws Are Unconstitutional (Courtesy of Wisconsin)*, AFL-CIO (May 9, 2014), <http://www.aflcio.org/Blog/In-The-States/25-Reasons-Why-Voter-Identification-Laws-Are-Unconstitutional-Courtesy-of-Wisconsin>.

striking down the union's constitutional provision, holding that "[b]y limiting . . . resignations[,] Respondent [union] elevates form over substance and complicates resignation procedures to the frustration of statutory rights of employees." *Id.* at 54. Of most importance to this case, the employees in *Sheet Metal Workers'* resigned by leaving a message on the union business agent's answering machine stating that they were "quitting." *Id.* at 53. This oral communication was held to be a valid resignation. *Id.* Obviously, the employees solely using an answering machine could not have affixed their signature to anything, or mailed anything to the financial secretary.

Here, Local 58's Policy requires much more than did the union policy rejected in *Sheet Metal Workers'*. Moreover, Local 58's failure to disseminate the Policy to all covered members and employees demonstrates that Local 58 is setting a trap for the unwary, and is attempting to exercise discretion over whether it will accept an employee's resignation as valid. *See Local 441, IUE (Phelps Dodge)*, 281 NLRB 1008, 1012 (1986) ("[T]he Board imposes on the Union a fiduciary obligation to notify the member of its restrictions on his right to resign."). Local 58 kept the Policy a virtual secret from its membership, (Tr. 46-49, 60), and tried to exercise unfettered discretion about whether to accept or reject resignations or find an undue hardship. Such conduct, however, is forbidden by *Pattern Makers'* and related cases because it simply "complicates resignation procedures to the frustration of statutory rights of employees." *Sheet Metal Workers'*, 298 NLRB at 54.

In *Peninsula Shipbuilders' Ass'n v. NLRB*, the collective bargaining agreement required employees to use a special union form to revoke their checkoff authorization, and also required employees to appear in person at the union hall to sign the form. 663 F.2d 488, 492-93 (4th Cir. 1981). The Fourth Circuit enforced the NLRB's finding that those rules imposed unlawful restrictions above and beyond those required by federal labor law. *Id.* at 491-92. The Fourth

Circuit also noted, “[w]hile there is no evidence that employees who sought to revoke [their checkoff authorization] were harassed at the PSA office, this additional requirement [that an employee could revoke only by personally appearing at the union hall] clearly could dampen the employee’s freedom to choose or revoke checkoff of his union dues” *Id.* at 493. The same is true regarding Local 58.

Under existing law, an employee’s written resignation and checkoff authorization revocation is valid and effective as soon as it is mailed, regardless of whether the employee subsequently appears in person at the union hall with valid photo identification or makes other arrangements, as Local 58 now demands. For example, in *Pattern & Model Makers Ass’n (Michigan Model Manufacturers Ass’n, Inc.)*, the Board held that resignation letters dropped in a mailbox are automatically effective at midnight on the day posted, even if the union has not yet received them. 310 NLRB 929 (1993). Local 58’s Policy is untenable given this law.

Furthermore, if Local 58 receives resignation and/or revocation letters it believes are ambiguous or of questionable authenticity, it is not privileged to sit back and demand that employees thereafter show up in person with valid photo identification to prove their intent to resign and revoke. If the union is unsure of the authenticity or meaning of an employee’s resignation or revocation letter, it bears the burden to inquire of the employee if he or she sent the letter, instead of unduly restricting all employees’ rights to resign and revoke via an across-the-board “in person photo ID” requirement. *See Local 441, IUE (Phelps Dodge)*, 281 NLRB 1008, 1012 (1986); *see also Local 1384, UAW (Ex-Cell-O Corp.)*, 227 NLRB 1045, 1048–49 (1977) (stating “considerations of elemental fairness would seem to require Respondent, after receiving the resignations, to take some action to give appropriate advice to the employees so that they would have an opportunity to comply with Respondent’s specific requirements. Thus,

it could well be argued that Respondent's conduct in this regard constituted a breach of its fiduciary duty to deal fairly with employees and that therefore respondent is now estopped from asserting that the resignations are invalid"). Indeed, Local 58's agent, Mr. Rosinski, testified that it was no burden to pick up the telephone and place a call to Mr. Greene to verify that his intent was to resign and revoke his authorization. (Tr.60–61).

Thus, Local 58's "defense"—that it has a great responsibility to "vet" resignations and keep its record straight because another union in another state more than six or seven years ago had one experience with a fraudulent hiring hall record—is frivolous and legally insufficient. Local 58 has no power to burden employees or restrict their right to resign and revoke in order to keep its records straight. If Local 58 does not trust the authenticity of a specific letter it receives, it is free to do exactly what Mr. Rosinski did here: accept the letter as facially valid upon receipt, and then call the employee to verify the letter's authenticity. It is not free, however, to burden every employee in its pursuit of an illegitimate goal of hindering and halting resignations and revocations.

Indeed, the United States Supreme Court rejected a strikingly similar argument that a specific form for revoking a checkoff authorization was necessary "in the interests of preventing fraud and forgery, and of obviating disputes as to the authenticity of revocation instruments." *Felter*, 359 U.S. at 335 (holding that union and employer cannot require a specific form be used when employees revoke their checkoff authorization cards). The Supreme Court stated, "[i]f the company suspects fraud or forgery in a revocation, it is within its power informally to check the matter with the employee." *Id.*; see also *Peninsula Shipbuilders' Ass'n*, 663 F.2d at 493 (dismissing the union's argument that to ensure the authenticity of union records revocations were only valid if a specific union form was used and signed in person at the union hall). In

short, if Local 58 questions the authenticity of a resignation and/or revocation letter, it is free to phone the employee and inquire as to the letter's authenticity. *Local 1384, UAW*, 227 NLRB at 1048–49. What Local 58 cannot do is force employees to appear in person at the union hall with a “voter ID,” or to establish an undue hardship that would then allow them to make other arrangements, as a condition of submitting their resignation and/or revocation.

There are other parallels as well. In *California Saw & Knife Works*, the Board struck down as too burdensome a union requirement that nonmember *Beck* objectors must send their communications to the union via certified mail or in individual envelopes. 320 NLRB 224, 236–37 (1995). Specifically, the Board stated:

[w]e further agree with the judge, for the reasons stated by him, that the IAM's requirements that objections be sent by certified mail, and in individual envelopes, constitute additional arbitrary restrictions on the employees' exercise of their *Beck* rights violative of Section 8(b)(1)(A) of the Act. . . . [T]he certified mail requirement is an arbitrary and unnecessary impediment to the exercise of *Beck* rights.

We further adopt the judge's careful analysis of the IAM's requirement that objections be sent in individual envelopes. The judge fully considered the IAM's contention that its individual envelope requirement is necessary to prevent mass *Beck* objections generated by ideological opponents of unionization or by employer coercion, and to ensure that a *Beck* objection is made as an act of individual conscience. The judge found that a voluntarily registered *Beck* objection, otherwise free of unlawful coercion, may not be rejected based on a union's desire to test the sincerity of the objector. As the IAM's express rationale for the single envelope rule is to so burden the objection process, we are compelled to agree with the judge that that requirement is an arbitrary and unlawful restriction on nonmembers' exercise of their *Beck* rights.

Id. (footnote omitted). If mailing a certified letter in a single envelope is deemed too burdensome for nonmember *Beck* objectors, how can a requirement that nonmembers physically appear at the union's offices with photo identification and a letter, or make other arrangements, to prove their intent to resign and/or revoke, possibly pass muster?

Similarly, the Board has struck down as too burdensome union policies that require nonmember *Beck* objectors to re-send a letter each year to renew their objections. *Machinists, Local Lodge 2777 (L-3 Commc 'ns, LLC)*, 355 NLRB 1062 (2010). Again, if simply mailing a renewal letter each year is deemed too burdensome for a nonmember, how can a requirement that a nonmember physically appear at Local 58's offices with photo identification and a letter, or make other arrangements, possibly stand? In short, the General Counsel and Charging Party have proven the violation alleged in the Complaint.

3. *Local 58's Policy does not reflect a legitimate union interest and is not reasonably enforced against union members who are free to leave the union and escape the rule.*⁷

Local 58 claims the Policy was implemented to avoid fraudulent resignations and revocations, to provide a “clear-cut, simple way” for members to resign, and to keep its membership rolls in order. (Tr. 35). Such interests are not legitimate, however, when the burden for keeping Local 58's records in order is placed solely on the resignees and those seeking to revoke checkoffs, rather than on Local 58 itself; nor is the Policy reasonably enforced against members who are free to leave.

First, Local 58's claim that the Policy is needed to ensure that its internal union pensions and death benefits are properly distributed provides no basis to burden the employees seeking to resign and revoke. The employees are not responsible for any difficulties Local 58 may have in maintaining proper records. *Felter*, 359 U.S. at 335. Indeed, it does not appear that Local 58 requires new members and new applicants for the pension funds and death benefits to show up in person to prove their identities.

⁷ Although “the legitimate union interest” and “reasonably enforced against union members” conditions of the *Scofield* test should not be reached because the Policy fails the second condition, we address them here out of an abundance of caution.

Although unions may well have a legitimate interest in the maintenance of accurate membership rolls, *see Int'l Union*, 865 F.2d at 797, such an interest does not support requiring resignees and/or revokees to show up in person to prove their identity and intent. An employee's letter is sufficient, without more, to show his or her intent to resign and revoke. *Felter*, 359 U.S. at 334; *Anheuser-Busch, Inc.*, 584 F.2d at 43; *Elec. Workers, Local 66*, 262 NLRB at 486. Moreover, such a letter is deemed to be received by the union within hours of its posting. *Pattern & Model Makers Ass'n*, 310 NLRB 929.

Second, the Policy is not reasonably enforced against union members who are free to leave Local 58 and escape the rule. How is a member free to leave Local 58 and escape the Policy if he must comply with the Policy in order to escape Local 58? Local 58 claims that Mr. Greene is the only individual to resign since implementation of the Policy; and its agent, Mr. Rosinski, admitted that it was no burden for him to pick up the telephone and call Mr. Greene to verify his resignation and revocation. (Tr. 59–61). Furthermore, enforcement of the Policy does not leave individuals free to leave Local 58 and escape the requirement of appearing in person with photo identification. It does quite the opposite by requiring them to remain members of Local 58 until they comply. Such restrictions cannot be held to be reasonably enforced against members who are free to leave and not comply with the rule.⁸

Lastly, no federal court or Board decisions permit, let alone require, resignations and revocations be in person and only with valid photo identification. *See Elec. Workers, Local 66*, 262 NLRB at 486 (footnotes omitted) (holding “a member may resign from the union at will so long as the desire to resign is clearly communicated,” and “such communication may be made in

⁸ To the extent Local 58 claims the Policy's undue hardship “exception” alleviates the requirements/burden on the resignees and/or revokees, such an argument is disingenuous. Even the “exception” restricts employees' Section 7 rights by placing the burden on the resignees and/or revokees to call Local 58, establish an undue hardship to Local 58's unilateral satisfaction, and make other arrangements to verify their intent. Such an “exception” is still a violation of employees' right to refrain and revoke.

any feasible way and no particular form or method is required”). As noted, Local 58 does not require individuals wishing to join the Union or its pension fund or to authorize a dues checkoff to show up in person at the union office and present a valid identification. Nor could it, in light of the recent holding in *United Food & Commercial Workers Union, Local 135 (Ralphs Grocery Co.)*, No. 21–CB–112391, JD(SF)–03–15 (NLRB Feb. 19, 2015).

In *Ralphs Grocery Co.*, the ALJ addressed whether a union could require an individual to appear in person at the union hall in order to meet the requirements of the contractual “union security” clause. The union argued that “its in-person affiliation practice serves legitimate Union interests and does not unreasonably burden employees[’] Section 7 rights,” and “is required to reduce illegal action such as fraudulent communications from individuals impersonating members on the phone and forged documents.” *Id.* at **12–13. Notwithstanding those “legitimate” concerns, the ALJ held that the challenged rule

infringes on employees’ rights to join or not join the Union by adding a requirement before the employees may fulfill their obligation under the union security clause to affiliate with the Union. I find that this requirement is arbitrary in that it imposes a significant burden on employees whether affiliating as full members, nonmembers who pay an ‘agency’ fee, or as *Beck* objectors.

Id. at *13.

IV. CONCLUSION

Based on the foregoing, Local 58’s Policy is facially invalid, serves no legitimate union interest, and is unreasonably enforced against members who are not free to leave the Union and escape the rule. The ALJ must find that Local 58’s Policy unlawfully restrains and coerces employees in the exercise of their Section 7 rights, and hold that Local 58 committed the unfair labor practices alleged in the Complaint by enacting, maintaining, implementing, and enforcing the Policy. The ALJ should order Local 58 to expunge the Policy and to communicate to all

bargaining unit employees that the Policy has been expunged. *J & R Flooring, Inc.*, 356 NLRB No. 9 (Oct. 22, 2010).

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petitioner's Post-Hearing Brief was filed electronically with NLRB Region 7, using the NLRB e-filing system, and copies were sent to the following parties via e-mail on this 14th day of September, 2015:

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