

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**UNITED FOOD AND COMMERCIAL WORKERS,  
LOCAL 1000 (KROGER)**

**and**

**Case No. 16-CB-151391**

**LORI HALEY, An Individual**

*Linda Reeder, Esq. and Maxie Gallardo, Esq., for the General Counsel.  
Michelle Owens, Esq., Agee Owens, LLC, counsel for the Respondent.*

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge.** This case was heard by me on March 24, 2016, in Ft. Worth, Texas. The complaint herein, which issued on December 30, 2015,<sup>1</sup> was based upon an unfair labor practice charge and first and second amended charges that were filed on April 30, July 30, and December 7 by Lori Haley an individual. It alleges that on about March 20, Haley requested that United Food and Commercial Workers, Local 1000, herein called Respondent and/or the Union, cease deducting dues from her paycheck and on about July 3 the Respondent told her that dues would continue to be deducted until she made that request on the anniversary date when she joined the Union. On July 3 she requested a copy of her dues-deduction authorization card in order to learn the anniversary date, but the Respondent has refused to provide her with a copy of her dues-deduction authorization form and has refused to cease her dues deduction, in violation of Section 8(b)(1)(A) of the Act.

**I. Jurisdiction and Labor Organization Status**

Respondent admits, and I find that Kroger (Haley's employer) has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**II. The Facts**

Haley has been employed by Kroger for about 9 years in a unit represented by the Respondent. She originally joined the Union on January 31, 2008, when she signed an application to join the Union as well as a dues-checkoff authorization agreement, which states:

This checkoff authorization and agreement shall be irrevocable for a period of one year from the date of execution or until the termination date of the agreement between the Employer and Local 1000, whichever occurs sooner, and from year to year thereafter, unless not less than ten (10) days and not more than twenty (20) days prior to the end of any subsequent yearly period I give the Employer and the Union written notice, by certified mail, of revocation bearing my signature thereto.

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2015.

By letter to the Union dated January 5, 2009, Haley wrote that she wanted to resign from the Union “effective now,” and “I am at my 1 year anniversary date and want all Union dues to stop being deducted from my weekly pay check.” At the top of the letter someone from the Union wrote “Ann. Date- 1-31-2008.” The Union wrote to Haley on January 12, 2009, saying that they received her letter and canceled her membership: “However, your resignation from membership does not affect your checkoff obligation that we will insist your employer continue to honor. The check off authorization which you signed clearly states that request for withdrawals must be made in writing not less than ten (10) days and not more than twenty (20) days prior to your anniversary date.” By letter fax dated January 20, 2009, she wrote the Union again, stating: “Talk to Darcy of the Dept. of Labor stating if I sent letter today you would stop taking my dues out of check.” Lisa Curlee, who is employed as an administrative assistant by the Union, testified that even though withdrawal letters have to be sent by certified mail, this request was accepted by the Union and her dues deduction was canceled because the Board had contacted the business agent about it. On August 31, 2009, Haley filled out an application and dues-authorization checkoff to rejoin the Union.

On March 20, 2015 Haley sent a registered letter to the Union stating that she wanted to resign from the Union effective that day and wanted to stop the deduction of dues from her pay. The final paragraph of this letter states:

The Federal Labor Board has told me that I do not have to wait until my anniversary date to be resigned from the Union if I am let go and no more money is taken from my check. Then they will not investigate, if I am forced to stay in the Union and \$ is taken from my check they will send an agent to Kroger and the Union.

She testified that she received no response to this letter. Curlee testified that shortly after March 26, when the letter was received by the Union, she received a telephone call from Robert Loghry, service director for the Union, asking her to send Haley a “Hicks Letter”<sup>2</sup> and to send her a copy of her union application, even though she did not request it in her March 20 letter, and she did so, attaching the August 31, 2009 application. She sent this letter to Haley on March 20 and it is identical to the January 12, 2009 letter it sent her. The letter does not state that her application is enclosed and Curlee does not normally attach applications to these Hicks letters, but she did on this occasion because Loghry asked her to do so. I asked Curlee:

Q. Well, again, you remember clearly that this letter went out...with her application attached?

A. I’m just saying, if I was asked to do that, then it was done...but there’s no record of it so I can’t say.

Q. So you’re not sure...you’re not certain whether the anniversary card...application was sent along with this March letter?

Q. There’s just no proof.

On redirect examination, she was asked by counsel for the Union:

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<sup>2</sup> The Union uses the term Hicks Letter to notify members that their resignation letter is untimely.

Q. Now, you said that you don't have any documentation for it, and it seems like the answer's a little bit unclear. You were asked by Mr. Loghry to send this document [the application]?

A. Yes.

Q. Did you send it?

A .Yes.

Loghry testified that, although the Union does not ordinarily send the member's application with the Hicks letter, on this occasion he asked Curlee to send the application to Haley because her letter states that she contacted the Board: "I was afraid we might end up where we are today, so I wanted to make sure she had one, so that we fulfilled our obligation."

On July 3, Haley and her husband, Barry Haley, met with Mandy Gann, the Union business agent covering the Kroger stores in the area, at a nearby store. She testified that she told Gann that she wanted to stop paying union dues and that Gann told her that she would have to wait for her anniversary date, which she said was January 30. Haley asked for a copy of her application and Gann said that she didn't have it, but a secretary named Jennifer would send it to her. She testified that she never received the application. On cross examination, Haley was asked:

Q. What did you need that document for?

A. So I can know for sure that I'm in the Union, and I can get out of the Union.

Q. Okay.

A. Because I've been trying to get out of the Union, and I already sent a registered letter in January of this year wanting out, and they're still saying it's in August. It's not in August.

Q. But you asked Ms. Gann when your anniversary date was.

A. Yes. And she said August 30—

Q. August—okay.

A. August 30.

Barry Haley testified that he was with his wife when they met Gann on July 3. At this meeting, she told Gann that she sent a certified letter in March asking that they stop deducting dues from her pay and Gann said that she was not aware of that. Gann also said that ". . . concerning her dues being removed, it would depend on her anniversary date of January 2008 when she would have signed a union document, authorizing them to remove dues from her pay." Haley then told Gann that he would like to see the document or that she would like to have a copy of the document, but Gann said that she was going on vacation, but would contact the secretary in the office and would get back to her at a later date. They did not receive anything from the Union through the end of 2015.

Gann testified that at this meeting Haley expressed concerns about her work hours,

insurance, the store manager and the previous Union business agent and Gann testified that she was able to secure some additional work hours for Haley that week: “And then, additionally, she asked me for her anniversary date at that meeting.” Gann called Curlee and even though it was a day off, Curlee had electronic access to the Union’s records and told her that Haley’s anniversary date was August 31, which she told Haley. Gann testified that Haley did not ask for a copy of her application.

On January 10, 2016 Haley wrote to the Union with a cc to the “U.S. Federal Labor Board, Ft. Worth, Texas” to stop deducting dues from her pay effective January 30, 2016. On January 21, 2016, the Union sent her the usual Hicks Letter as well as a letter with her August 31, 2009 application attached. As of March 2016 union dues were still being deducted from her pay. Haley testified that the Union did not file any grievances on her behalf; Gann testified that during 2015, the Union filed five grievances on Haley’s behalf, and withdrew two of them.

### III. Analysis

The complaint alleges at Paragraph 7A that on about March 20 Haley requested that the Union cease deducting dues from her paycheck and that (at Paragraph 7B) on about July 3 the Union told her that dues would continue to be deducted until she made a timely request, on the anniversary date that she joined the Union. Clearly, it is perfectly legal for the Union to make such a demand as it is stated in the lawful checkoff authorization that Haley, and all other union members, signed. Therefore, the only violation alleged here is set forth in Paragraphs 7C, D, and E, which state that although Haley requested a copy of her dues-deduction authorization card on July 3 in order to confirm her anniversary date, the Union refused to provide her with this information and continued to deduct union dues from her wages, in violation of Section 8(b)(1)(A) of the Act.

Although Haley was not an incredible witness, she clearly had difficulty remembering certain facts, especially those situations that occurred a year or more ago; she did not remember filing the unfair labor practice charges or the dues-checkoff authorizations involved herein and she did not remember that the Union had filed grievances on her behalf, as credibly testified to by Gann. In addition, while on direct examination she testified that on July 3, Gann told her that her anniversary date was January 30, 2000, on cross examination she testified that Gann told her that her anniversary date was August 30 and then, on redirect, she again testified that Gann told her that it was January 30. Although Barry Haley’s testimony was more credible and was supportive of the January 30 date, I found Gann and Curlee to be the most credible witnesses. They appeared to be testifying credibly, as best they could. For example, Curlee did not testify outright that she sent Haley’s application along with the March 20 letter. Rather, she testified that although there was no proof that she sent it, she remembers that Loghry asked her to send it: “If I was asked to do it, then it was done...” Likewise, I found Gann to be testifying in a truthful manner, and credit her testimony that at the July 3 meeting she called Curlee, learned that Haley’s anniversary date was August 31, and told her that was her anniversary date. Although counsel for the General Counsel makes a strong argument in her brief that the fact that Haley made her request to withdraw on January 10, 2016, supports her credibility that Gann told her the January 30 date, as I found Gann to be a more credible witness, I have credited her testimony that she told her the August 31 anniversary date.

As I have credited Gann that on July 3 she told Haley that her anniversary date was August 31, there is no violation of Section 8(b)(1)(A) of the Act. But even if I didn’t credit her testimony and found that Gann told her the January date, I would find that this did not violate the Act.

In *Teamsters Local 337 (Swift-Eckrich)*, 307 NLRB 437, 438 (1992), the Board stated:

A union breaches its duty of fair representation toward employees it represents when it engages in conduct affecting those employees' employment conditions which is arbitrary, discriminatory or in bad faith...It is also well settled, however, that something more than mere negligence or the exercise of poor judgment on the part of the union must be shown in order to support a finding of arbitrary conduct.

See also *General Truck Drivers Local No. 672 (Great Western)*, 209 NLRB 446 (1974). In addition, the bargaining representative is entitled to a "wide range of reasonableness," *Ford Motor Co. v. Huffman*, 345 U.S.330, 338 (1953). However, where the union's action, or inaction, is due to the employee's intra-union activities, hostility to the employees, or involved a "willful deception" of the employee, then the "something more" requirement is satisfied. *Electrical Workers, Local 485 (Automotive Plating)*, 170 NLRB 1234 (1968); *Pacific Coast Utilities Service*, 238 NLRB 599, 607 (1978); *Auto Workers Local 417 (Falcon Industries)*, 245 NLRB 527, 535 (1979). And, finally, in *Mail Handlers Local 308*, 339 NLRB 93 (2003), the Board stated: "A union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's action, the union's behavior is so far outside 'a wide range of reasonableness' to be irrational." Even if Gann had told Haley that her anniversary date was January 30 or 31, as the evidence fails to establish any animosity toward her, I find that it was mere negligence and not outside the "wide range of reasonableness" permitted to the Union. I therefore recommend that this allegation, and the complaint be dismissed.

### Conclusions of Law

1. The Employer has been as employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.
3. The Union did not violate the Act as alleged in the complaint.

On these findings of fact, conclusions of law and based upon the entire record, I hereby issue the following recommended<sup>3</sup>

### ORDER

It is recommended that the complaint be dismissed in its entirety.

**Dated, Washington, D.C. April 26, 2016**



**Joel P. Biblowitz**  
Administrative Law Judge

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.