

**No. 16-1031**

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**NATALIE RUISI and MICHAEL PELUSO**

**Petitioners**

**v.**

**NATIONAL LABOR RELATIONS BOARD**

**Respondent**

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**ON PETITION FOR REVIEW OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), counsel for the National Labor Relations Board (“the Board”) certify the following:

(A) Parties and Amici: Natalie Ruisi and Michael Peluso, petitioners herein, were charging parties in the case before the Board. The Board is the respondent herein. Local Joint Executive Board of Las Vegas, Culinary Workers Union Local 226, and the Bartenders Union, Local 165, both of which are affiliated with UNITE HERE, were the respondent before the Board.

(B) Ruling Under Review: This case involves a petition for review of the Board’s dismissal of one of the complaint allegations in the Board’s Decision and Order in Case Nos. 28-CB-128997 and 28-CB-129003, issued on October 30, 2015, and reported at 363 NLRB No. 33.

(C) Related Cases: This case has not previously been before this Court or any other court. Board counsel are unaware of any related cases currently pending before, or about to be presented before, this Court or any other court.

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Dated at Washington, DC  
this 5th day of August, 2016

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**BRIEF FOR  
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**STATEMENT OF SUBJECT MATTER AND  
APPELLATE JURISDICTION**

This case is before the Court on the petition for review filed by employees Natalie Ruisi and Michael Peluso, who were charging parties before the Board, in which they contest the Board's dismissal of one of the complaint allegations in the

Decision and Order issued on October 30, 2015, and reported at 363 NLRB No.

33. (JA 403-08.)<sup>1</sup> The Board's Order is final with respect to all parties.

The Court has jurisdiction over the petition pursuant to Section 10(f) (29 U.S.C. § 160(f)) of the National Labor Relations Act ("the Act"), as amended (29 U.S.C. §§ 151 et seq.), which permits persons aggrieved by a Board order to petition for review in this Court. The petition was timely filed on January 28, 2016, as the Act imposes no time limit for such filings.

### **STATEMENT OF ISSUE**

Whether the Board reasonably dismissed the complaint allegation that the Union unlawfully required Ruisi and Peluso to submit a written request in order for the Union to provide them with the dates of when they signed their dues-checkoff authorization cards.

### **RELEVANT STATUTORY PROVISIONS**

Relevant sections of the Act are reproduced in the Addendum to this brief.

### **STATEMENT OF THE CASE**

Ruisi and Peluso were employees of Host International ("the Company"), which has a collective-bargaining agreement with Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and the Bartenders Union, Local

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<sup>1</sup> Citations are to the joint appendix filed on June 16, 2016. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

165, which in turn are affiliated with UNITE HERE (collectively “the Union”). Ruisi and Peluso signed dues-checkoff authorizations in 2004 and 2007, respectively. In 2013, they sought to revoke those authorizations, which needed to be accomplished in writing within 15 days of the anniversary of the dates they signed the authorizations. After Ruisi called the Union to find out her authorization date and was told she needed to request it in writing for the Union to provide it, she and Peluso filed unfair-labor-practice charges (JA 224, 226), and the Board’s General Counsel issued a complaint against the Union alleging multiple violations of Section 8(b)(1)(A) of the Act. 29 U.S.C. § 158(b)(1)(A). (JA 210-16.) The Board found one violation and dismissed the remaining allegations. Before the Court, the only contested matter is the Board’s finding that the General Counsel did not carry his burden of proving that the Union violated Section 8(b)(1)(A) by telling Ruisi that she could obtain the authorization dates from the Union only if she requested the dates in writing. The Board’s findings are summarized below.

## **I. THE BOARD’S FINDINGS OF FACT**

### **A. The Collective-Bargaining Agreement and the Union’s Dues-Checkoff Authorizations**

The Union serves as the exclusive bargaining representative of the food and beverage employees at the Company’s McCarran International Airport location in Las Vegas, Nevada, where the Company operates several restaurants. (JA 405;

32.) The Union and the Company have agreed to a dues-checkoff agreement, where each employee may voluntarily authorize the Company to automatically deduct monthly membership dues from the employee's wages. (JA 405; 233, 269-71.) Pursuant to Section 302(c)(4) of the Act (29 U.S.C. § 186(c)(4)), the checkoff agreement allowed employees the opportunity to revoke their authorizations on an annual basis. (JA 405; 269-71.) The employee's authorization card accordingly states:

This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both the Employer and the Union by registered mail during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization or subsequent to the date of termination of the applicable contract between the Employer and the Union, whichever occurs sooner, and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as herein above provided . . . .

(JA 405; 269.)

Wanda Henry is the director of operations for the Union and its 50,000 members. (JA 405; 28, 36.) She oversees a staff of 10 to 15 employees in handling all records coming from employers, managing the orientation of new members into the Union, generating reports on union membership, and handling members' inquiries regarding their dues-checkoff authorizations. (JA 405; 29-30, 38-39, 47.) Henry receives new dues-checkoff authorizations on a daily basis, and submits original authorization cards to the appropriate employer once or twice per

month. (JA 406; 49-50.) The Union retains a paper copy of each authorization in its files. (JA 406; 153.) As of five or six years ago, the Union began scanning these cards, and the paper files are located in a filing room in a different part of the building from Henry's office. (JA 51, 153.)

Henry receives about two letters each day requesting to revoke dues-checkoff authorizations, and about three or four phone calls each day regarding how to do so. (JA 405; 44.) Over her 18 years as director of operations, Henry has developed a standard response that she gives on a daily basis, and does not vary between members, when a member calls asking about cancelling their dues-checkoff authorization. (JA 406; 38-39, 146, 152.) Henry instructs them that they must send a written request within 15 days of the anniversary of the authorization, in accordance with the terms of the card signed by the employee. (JA 406; 44.) If the employee asks for the authorization date, Henry informs them that she does not provide that information over the phone. (JA 406; 45-46.) Henry does not provide the information over the phone because, by having a record of the request, she can ensure that the Union provides correct information, and because this ensures that the request comes from the employee. (JA 406; 47, 149.) As Henry testified, "If I stop someone's dues—and I don't know who you are when you call me. And that person loses rights when I stop someone's dues. So, giving that information out is confidential and I only give it out when it's done through a letter." (JA 406; 47.)

Henry therefore instructs the employee that they may request their authorization date in writing or they may also contact their employer's payroll department for a copy of the authorization card. (JA 406; 147.)

Upon receiving a written request for the authorization date, Henry searches the computer system, and, if the scan of the authorization card was illegible or if authorization card was signed before the Union began scanning files, she searches the Union's paper files. (JA 406; 50-51.) Upon completing her research, Henry mails a copy of the checkoff authorization card, which contains the date of signing, to the requesting employee. (JA 406-07; 44, 48, 147-48.)

**B. Ruisi and Peluso Pursue Revocation of Their Dues-Checkoff Authorizations**

Natalie Ruisi is a cocktail server for the Company at its McCarran Airport location, and served as a shop steward for the Union from 2008 to 2010. (JA 405; 78-79.) She signed a dues-checkoff authorization card for the Union on July 18, 2004. (JA 405; 79, 104, 282.) Michael Peluso is a line cook for the Company at its McCarran Airport Location. (JA 405; 124.) He signed his dues-checkoff authorization card for the Union on February 5, 2007. (JA 405-06; 124, 136, 295.)

On November 25, 2013, Ruisi called the Union and spoke to Henry regarding how to revoke her dues-checkoff authorization. (JA 405; 84.) Henry provided her standard response and instructed Ruisi to mail a revocation letter within 15 days of the anniversary date of her signing the authorization card. (JA

405-07; 45-46.) When Ruisi asked how she can find out her authorization date, Henry explained that Ruisi could call her employer's payroll office, or that Ruisi could also mail a written request for revocation, at which time Henry would either revoke the authorization or notify Ruisi of the correct date. (JA 405-07; 147.)

In light of this phone call, Ruisi called the Company's payroll department on December 9 to ask for her and Peluso's authorization dates. (JA 406; 87-88.) A Company payroll employee explained that she did not have the dates. (JA 406; 89.) The payroll employee instead told her that the Company began deducting Ruisi's dues on August 16, 2006, and began deducting Peluso's dues on March 8, 2007. (JA 406; 89.)

Ruisi drafted a letter on behalf of Peluso dated February 19, 2014. (JA 406; 89, 277.) This letter requested revocation of Peluso's dues deductions, and Peluso sent it by certified mail on February 20. (JA 406; 90.) After mailing the letter, Peluso called Henry multiple times and left voice mails when Henry did not answer; the last voice mail requested that Henry call Ruisi. (JA 406; 91.)

Meanwhile, Henry reviewed the Union's records and found that Peluso's authorization date was February 5. (JA 406; 153-54.) Because she counted the authorization date as the first of the 15 days, she decided that Peluso's request, postmarked on February 20, was one day outside the 15-day window. (JA 406; 62-63.) On February 25, 2014, she called Ruisi and, during this conversation,

explained that Peluso's request was untimely. (JA 406; 91-92.) When Ruisi requested her own authorization date, Henry refused to provide that information without a written request. (JA 406; 93.) As a result of Henry's findings, she sent a letter to Peluso by both regular and certified mail, informing him that his revocation was untimely. (JA 406; 278, 286-95.)

## **II. The Board's Conclusions and Order**

On October 30, 2015, the Board (Chairman Pearce and Members Miscimarra and Hirozawa) issued its Decision and Order. On exceptions filed by charging parties Ruisi and Peluso, the Board reviewed and adopted the administrative law judge's dismissal of the allegation that the Union violated Section 8(b)(1)(A) of the Act by directing them to submit written requests to the Union if they wanted the Union to provide their authorization dates. (JA 403 & n.1.) In doing so, the Board agreed with the judge's finding that the Union's policy of disclosing the dates only upon a written request by the employee was not irrational. (JA 403 n.1, 407.)<sup>2</sup>

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<sup>2</sup> In the absence of exceptions, the Board adopted the judge's dismissal of the allegation that the Union unlawfully delegated the task of providing checkoff authorization dates to the Company's payroll department, as well as the judge's finding that the Union violated Section 8(b)(1)(A) by refusing to honor Peluso's registration from union membership and his timely revocation of his dues-checkoff authorization. (JA 403 n.1.) Neither of those conclusions are before the Court.

## STANDARD OF REVIEW

Under Section 10(c) of the Act (29 U.S.C. § 160(c)), the Board's General Counsel bears the burden of establishing an unfair labor practice by a preponderance of the evidence. *See NLRB v. Transp. Mgmt. Corp.*, 462 U.S. 393, 395 (1983). Where, as here, the Board decides that the General Counsel has failed to establish a violation of the Act, the Court must uphold that determination “unless the Board ‘acted arbitrarily or otherwise erred in applying established law to facts.’” *UFCW Local 204 v. NLRB*, 506 F.3d 1078, 1080 (D.C. Cir. 2007) (citation omitted). The Court affords special deference to decisions by the Board interpreting a union's duty of fair representation, given that the Board itself “reviews the [u]nion's actions with deference.” *Thomas v. NLRB*, 213 F.3d 651, 657 (D.C. Cir. 2000). Although this deference “does not mean that [the Court's] review is toothless,” it does mean that the Court “must be very cautious in entertaining an invitation to reverse the Board.” *Id.* And the Court “will not ‘displace the Board's choice between two fairly conflicting views [of the facts], even though the Court would justifiably have made a different choice had the matter been before it *de novo*.” *UFCW Local 204*, 506 F.3d at 1080 (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951)).

## SUMMARY OF ARGUMENT

The Board reasonably dismissed the allegation that the Union unlawfully required employees to submit written requests in order to receive their authorization dates, and in doing so, found that the Union's policy was not so far outside a wide range of reasonableness as to be irrational. Indeed, as the Board recognized in assessing the Union's policy, when an employee requests their authorization date from the Union, the Union has a need to ensure that it provides the correct employee with the correct information. Requiring that the request be in writing allows the Union to properly verify the request and authenticate the date before divulging it. In turn, the policy also gives the Union the option of releasing the information in writing, which prevents any dispute from arising over what information was given. Accordingly, applying the accepted duty-of-fair-representation standard for determining whether internal union policies are unlawfully arbitrary, the Board reasonably found that the Union's policy was not so far outside a wide range of reasonableness as to be irrational.

Petitioners' contention that the Union acted in bad faith by refusing to provide employees with authorization dates over the phone is not supported on the record, which instead shows that the Union at all times acted honestly in carrying out its policy. And Petitioners' claim that the Union's policy was discriminatory is also without merit, because the policy applied equally to all employees who signed

a dues-checkoff authorization and because the Union had a legitimate interest in adopting that policy.

## ARGUMENT

### **THE BOARD REASONABLY DISMISSED THE COMPLAINT ALLEGATION THAT THE UNION UNLAWFULLY REQUIRED RUISI AND PELUSO TO REQUEST THEIR DUES-CHECKOFF AUTHORIZATION DATES IN WRITING**

#### **A. Applicable Principles**

Section 7 of the Act guarantees the right of employees to “join, or assist labor organizations . . . and . . . to refrain from . . . such activities.” 29 U.S.C. § 157. Section 8(b)(1)(A) of the Act implements this guarantee against unions by making it an unfair labor practice for a union to “restrain or coerce . . . employees in the exercise of their Section 7 rights.” 29 U.S.C. § 158(b)(1)(A).

The duty of fair representation, which derives from a union’s status under Section 9(a) of the Act (29 U.S.C. § 159(a)) as exclusive bargaining representative, requires a union “to represent all members fairly.” *Marquez v. Screen Actors Guild*, 525 U.S. 33, 44 (1998) (citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953)). A union breaches this duty when its conduct toward a member is “arbitrary, discriminatory, or in bad faith.” *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). As the Supreme Court has clarified, “a union’s actions are arbitrary only if, in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior is so far outside a ‘wide range of reasonableness’ as to be

irrational.” *Air Line Pilots Ass’n v. O’Neill*, 499 U.S. 65, 67 (1991) (citation omitted); *accord Mail Handlers Local 307*, 339 NLRB 93, 93 (2003). To fulfill its duty, a union need not “prove ‘that the choices it makes are better or more logical than other possibilities,’ but, instead, that the union ‘act[s] on the basis of relevant considerations,’ not arbitrary ones.” *Thomas*, 213 F.3d at 656 (quoting *Reading Anthracite Co.*, 326 NLRB 1370 (1998)); *see also Marquez v. Screen Actors Guild, Inc.*, 525 U.S. at 45-46 (1998) (stating that the union must have “room to make discretionary decisions and choices, even if those judgments are ultimately wrong”).

Section 302 of the Labor Management Relations Act (29 U.S.C. § 186), which generally prohibits payments from an employer to a union, includes an express exception for the payment of union dues. Thus, employees and their employer can enter into individual written agreements, called dues-checkoff authorizations, which instruct the employer, for a particular period of time, to deduct union dues from employees’ wages and remit those dues to the union that represents them. *See Lockheed Space Operations Co.*, 302 NLRB 322, 325, 328-29 (1991).<sup>3</sup>

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<sup>3</sup> Such authorizations are also lawful in a “right-to-work” state, such as Nevada in this case, where a provision requiring the payment of union dues would be unlawful under Section 14(b) of the Act, which permits states to prohibit “agreements requiring membership in a labor organization as a condition of

Specifically, Section 302(c)(4) permits an employer to deduct union dues and remit them, “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). Courts have therefore recognized that a “window period”—a limited time each year when employees may revoke their dues-checkoff authorizations—is a lawful limitation on their right to revoke. *See Williams v. NLRB*, 105 F.3d 787, 792 (2d Cir. 1996); *NLRB v. Atlanta Printing Specialties & Paper Prods. Union* 527, 523 F.2d 783, 785 (5th Cir. 1975). Since dues-checkoff systems were developed as a way to minimize the administrative burden on employers and unions with respect to the collection of dues, the Board, in interpreting a dues-checkoff authorization, seeks to avoid a holding that will have a widespread disruptive effect on existing dues checkoff arrangements or place undue burdens on unions and employers. *Associated Builders & Contractors v. Carpenters Vacation and Holiday Trust Fund for N. Cal.*, 700 F.2d 1269, 1277 (9th Cir. 1983); *Atlanta Printing Specialties & Paper Products Union* 527, 523 F.2d at 786.

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employment . . . .” 29 U.S.C. § 164(b). *See Syscon Int’l, Inc.*, 322 NLRB 539, 539 n.1 (1996).

**B. The Union's Policy Requiring a Written Request for Checkoff Authorization Dates Was Not So Far Outside a Wide Range of Reasonableness as To Be Irrational**

The narrowness of Petitioners' arguments is, in large measure, a function of settled principles. Petitioners do not dispute (Br. 2, 8-9), nor could they, that the Union's dues-checkoff agreement validly allowed employees the opportunity to revoke their authorizations annually. *See* 29 U.S.C. § 186(c)(4), and cases cited at pp. 12-13, above. Petitioners also do not dispute (Br. 2, 8-9), nor could they, that the agreement validly established a 15-day window for permissible revocation tied to the anniversary date of when each employee signed the authorization. *See Williams*, 105 F.3d at 792; *Atlanta Printing Specialties & Paper Prods. Union* 527, 523 F.2d at 785.<sup>4</sup> Finally, Petitioners do not dispute (Br. 2, 8-9), nor could they, the lawfulness of the Union's requirement that the employee's revocation must itself be in writing. *See Boston Gas Co.*, 130 NLRB 1230, 1231 (1961).

Under this accepted scheme, employees, in order to revoke their dues authorization, must submit their written request in the 15-day window starting the day after the anniversary of their having signed the dues authorization form in the first place. (JA 405; 269-71.) The employee may know of, or can learn, this date in several ways. First, the employee may know this date by having kept their own

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<sup>4</sup> Indeed, the Board polices these terms, as it did when it found that the Union unlawfully refused to honor the revocation that Peluso sent within his window period. (JA 403, 407.)

record of when they signed the authorization. Second, even if they have not recorded the exact date, employees can make a reasonable guess at the date and just send in an actual dues revocation form to the Union. (JA 406; 48-49.) As the record shows here, if the employee has submitted a form at the wrong time, the Union will respond by telling the employee their authorization date. (JA 406; 48-49.) Third, as the record here also shows, and as the Union advised any employee who inquired, the original authorization cards are kept by the Company, and each employee is free to ask the Company what its records show their authorization date to be. (JA 406; 147.) Finally, employees may ask the Union to tell them their authorization date. (JA 406-07; 147-48.)

Here, when the Ruisi chose this final option and asked the Union to supply her with her authorization date, the Union required that the request be made in writing and not over the phone. (JA 407; 147-48.) As the record shows, the Union's policy requiring written requests serves as a means of verifying that the proper person is requesting that information. (JA 406; 47, 147.) As Henry testified, "Depending on your name, I may find five people with the same address, the same hotel. So I need to be very clear on what I'm doing if that happens." (JA 57.) This is confidential information, and the Union has an interest in not wanting someone other than the individual who signed the dues authorization card to know

when the individual's membership and dues authorization can be terminated. (JA 406-07; 147.)

The Union's policy also allows it to respond in writing, thus allowing a paper trail to give the Union an opportunity to properly check the date before giving it out and to avoid disputes over what date the Union disclosed. (JA 406; 147.) This case illustrates the importance of such verification, as Ruisi and Henry testified differently regarding their phone conversations. (JA 405-06.) A paper trail demonstrating who requests an authorization date and what date was given in response to that request serves to avoid later disputes over what information the Union provided and to whom. (JA 403 n.1, 406-07; 149.)

These practical considerations demonstrate that the Board (JA 403-08) reasonably rejected the argument that the Union's policy of supplying an employee with the date of their dues authorization only upon written request of the employee was "so far outside a wide range of reasonableness as to be irrational." (JA 407 (citing *Mail Handlers Local 307*, 339 NLRB at 93).) In *Mail Handlers*, the Board examined whether a union's decision on whether and how it gives out requested information was arbitrary in violation of the union's duty of fair representation, and applied the "wide range of reasonableness" standard from *O'Neill*, 499 U.S. at 67. *Mail Handlers Local 307*, 339 NLRB at 93. Petitioners do not dispute this standard, nor do they even acknowledge that this standard from the Supreme Court

governs this case. Here, the Board similarly examined whether it was arbitrary for the Union to refuse to provide information without a written request, so it applied the same standard for arbitrariness that was applied in *Mail Handlers Local 307*.

In concluding that the Union's policy was not so far outside a wide range of reasonableness as to be irrational, the Board noted (JA 403 n.1) that its conclusion was supported by its decisions in *Postal Service*, 302 NLRB 701 (1991), and *Boston Gas Co.*, 130 NLRB at 1231. In *Postal Service*, just as in this case, the union told employees that, to find out their authorization date, they had to put their request in writing. 302 NLRB at 702. There, the writing was the submission of an actual dues revocation form itself, and there it was submitted to the employer directly instead of to the union. *Id.* If the form was untimely received, the employer would inform the employee of their authorization date. *Id.* The Board found this procedure for finding out one's anniversary date to be lawful. *Id.* Here, by contrast, the Union had a procedure for the employee to request the authorization date directly from the Union and without submitting a revocation form. (JA 408; 147-48.) The Union's procedure here for responding to a direct written request for an authorization date is no less lawful than the indirect way employees found out their correct date in *Postal Service*, when they submitted a written revocation form. (JA 403 n.1.)

In *Boston Gas Co.*, 130 NLRB 1230 (1961), the Board upheld the requirement that, to revoke one's dues authorization, the employee must give written notice to both the employer and the union. While there the issue was the actual revocation of the dues authorization itself, the Board's decision stands for the principle that, when analyzing the lawfulness of a procedure imposed on employees who seek to end their dues deductions, the test is whether the procedure is "unduly burdensome as to effectively preclude employees from revoking dues assignments." (JA 403 n.1 (citing *Boston Gas*, 130 NLRB at 1231).) Here, it must be remembered that there is absolutely no challenge to any procedure the Union actually imposes on employees seeking to end their dues deduction. Instead, the challenge is to the procedure the Union implemented to respond to a request for information that will tell employees when to submit timely revocations. Of course, one way employees can find that information is exactly the same way as they found out in *Postal Service*—submit a revocation form and, if it is untimely, the employee will be told the correct date. (JA 407.) The fact that the Union offers another way—having employees submit a written request for the authorization date—certainly is not something that effectively precludes employees from revoking their dues assignments.<sup>5</sup>

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<sup>5</sup> Petitioners' attempt (Br. 27-32) to distinguish these two cases on their factual differences does not detract from the point that the Board is applying the same legal standards to analogous situations.

Petitioners cite (Br. 20) *Hughes Aircraft Co.*, 164 NLRB 76 (1976) to argue against the Board's conclusion. They state that in *Hughes*, "an employee orally requested his revocation dates from both his employer and the union steward. Both the employer and the union gave the employee incorrect information. The Board held the union's failure to properly respond with correct information was a violation of the Act." (Br. 20 (internal citations omitted).) What Petitioners completely miss is that the Board's holding of union liability for giving out incorrect information in *Hughes* underscores why the Union would want to implement a procedure to minimize the chance that it could be accused of giving out the wrong revocation date. (JA 403 n.1, 406-07; 47, 147.) The Union's procedure in this case ensures that, when the Union is looking up the authorization date, the Union has properly identified the person requesting the date. (JA 406-07; 47, 147.) And it lessens the chance the Union will give out the wrong date, because the Union will have a chance to check any computer-entered date, if one even exists, against a copy of the card. (JA 406-07; 47, 50-51, 147.) And it also lessens the chance that there will be a dispute over whether the Union gave out the right date because it gives the Union the option of responding to the request in writing, thereby foreclosing any dispute over what date was given. (JA 406-07; 147.)

All of the other cases cited by the Petitioners (Br. 21-22) are inapplicable: in all but one of those cases, the unions flatly refused to provide the correct information requested by employees, whereas here the Union merely required the request to be in writing. In the other case, *California Saw and Knife Works*, 320 NLRB 224 (1995), the Board struck down a union's requirement that employees who object to paying dues for nonrepresentational purposes do so by certified mail. *Id.* 291-92. The Board wrote that, “[s]ince the use of certified mail could only benefit the sender . . . only that person should rationally determine if such form of mailing is desirable.” *Id.* at 292. Here, the Union is not requiring the use of certified mail for a request for an authorization date.

Petitioners do not squarely address the Union's interest in verifying who the requestor is. Nor do Petitioners squarely address the Union's wanting to take the time to make sure it is giving out the right information to the right person and in wanting to avoid disputes over what information was given out. Instead, Petitioners simply rely on cases (Br. 22) that show, in some circumstances, employee information such as names and addresses can be disclosed. But those cases do not stand for the principle that there is no confidentiality interest attached to the information. Rather, they stand for the principle that a Union's or other employees' need for the information can override that confidentiality interest. *See, e.g., Representation—Case Procedures*, 79 Fed. Reg. 74308, 74349 (Dec. 15,

2014); *Excelsior Underwear Inc.*, 156 NLRB 1236, 1245 (1966). Here, Petitioners have shown no reason why an employee's dues authorization anniversary date—to which unquestionably a confidential interest also attaches—should be available to someone other than the employee himself.

Petitioners also argue (Br. 20-21) that the Union did not keep Peluso's authorization date confidential when Henry told that date to Ruisi. What Petitioners ignore is that Henry disclosed the date only after receiving Peluso's written request for the date and only after Peluso directed Henry to speak with Ruisi about the revocation. (JA 406; 91-92.) Henry therefore acted, at all times, consistently with the Union's policy protecting information it deemed confidential. (JA 406.)

Having failed to demonstrate that the Union's policy was arbitrary, Petitioners alternatively claim (Br. 24-27) that the Union's policy was infirm under the "bad faith" and "discriminatory" prongs of *Vaca v. Sipes*, 386 U.S. at 190. *See* p. 11, above. Petitioners contend (Br. 24) that the Union acted in bad faith through Henry's alleged "misunderstanding of the procedure for revoking a checkoff," "misapplication of the policy to a mere request for" authorization dates, and "intentionally sending Petitioners to" the Company with knowledge that the Company would not in fact provide the dates. Petitioners provide no support for any of these assertions. Courts apply a "demanding standard" for finding bad faith,

requiring “a showing of fraud, or deceitful or dishonest action [that is] sufficiently egregious or so intentionally misleading as to be invidious.” *Int’l Union of Elec., Elec., Salaried, Mach. and Furniture Workers v. NLRB*, 41 F.3d 1532, 1537 (D.C. Cir. 1994) (citations omitted). Petitioners cannot satisfy this standard, as all Henry did was articulate the Union’s policy to Ruisi, just as she has done consistently in response to telephonic requests to the Union. (JA 405-07; 44-46.) More importantly, because Henry forwards all authorization cards to the various employers’ payroll departments, she reasonably expected the Company’s payroll department to be able to comply with Ruisi’s request for the authorization date. (JA 406-07; 49-51.) Unlike the cases cited by Petitioners (Br. 25), the Union’s policy is not “unduly cumbersome” and it does not prevent employees from successfully revoking their dues authorization, like the Board found Peluso successfully did in this case. (JA 403 n.1, 406-07.)

Petitioners have also failed to show, contrary to their contention (Br. 25-27), that the Union’s policy offended *Vaca v. Sipes*’ discriminatory prong. The Union’s policy of requiring written requests before providing authorization dates was applied uniformly to the entire class of those having signed authorization cards. Any argument that the Union’s policy impermissibly discriminates against this entire class by unduly burdening their right to revoke their dues authorization is baseless. As shown above, the Union’s interest in requiring a written request

further its legitimate interest in having the correct employees receive the correct information and minimizes the likelihood of any subsequent disputes over information the Union did provide. *See generally Amalgamated Ass'n of Street, Elec. Ry. and Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 301 (1971).

## CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Court enter a judgment denying the petition for review

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August 2016

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATALIE RUISI and MICHAEL PELUSO	)	
	)	
Petitioners	)	
	)	No. 16-1031
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent	)	

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 5,313 words of proportionally-spaced, 14-point type and the word processing system used was Microsoft Word 2010.

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Dated at Washington, DC  
this 5th day of August, 2016

## ADDENDUM OF STATUTES

Relevant statutory provisions cited in the brief are as follows:

**Section 7 (29 U.S.C. § 157) provides in relevant part:**

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

**Section 8(b) (29 U.S.C. § 158(b)) provides in relevant part:**

It shall be an unfair labor practice for a labor organization or its agents--

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

**Section 9(a) (29 U.S.C. § 159(a)) provides in relevant part:**

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given the opportunity to be present at such adjustment.

**Section 10 (29 U.S.C. § 160) provides in relevant part:**

\* \* \*

(c) . . . . If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged or is engaging in any unfair labor practice, than the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action . . . as will effectuate the policies of this Act . . . . If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. . . .

\* \* \*

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. . . . Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction . . . in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

**Section 14(b) (29 U.S.C. § 164(b)) provides in relevant part:**

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

**Section 302(c) (29 U.S.C. § 186(c)) provides in relevant part:**

The provisions of this section shall not be applicable . . . (4) 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 . . . .

**UNITED STATES COURT OF APPEALS  
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Petitioners	)	
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v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I certify that the foregoing document was served on all those parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not by serving a true and correct copy at the addresses listed below:

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Dated at Washington, DC  
this 5th day of August, 2016