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Local 58, International Brotherhood of Electrical Workers (IBEW), AFL–CIO (Paramount Industries, Inc.) and Ryan Greene. Case 07–CB–149555

February 10, 2017

DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS
PEARCE AND MCFERRAN

On October 26, 2015, Administrative Law Judge David I. Goldman issued the attached decision. The General Counsel and Charging Party filed exceptions and supporting briefs. The Respondent filed responsive briefs to the General Counsel’s and Charging Party’s exceptions, and the Charging Party filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The issue presented here is whether a policy issued unilaterally by the Respondent, a local union, is facially unlawful because it restricts the rights of union members to resign from the union and to revoke prior authorizations for the deduction of union dues from their pay. In disagreement with the administrative law judge and our dissenting colleague, we conclude that the policy violates Section 8(b)(1)(A) of the National Labor Relations Act, which makes it an unfair labor practice for a labor organization “to restrain or coerce. . . employees in the exercise of the rights guaranteed in [S]ection 7” of the Act. 29 U.S.C. §158(b)(1)(A). Among the rights guaranteed in Section 7 is the “right to refrain from any or all” forms of union activity, subject to the requirements of a valid union-security clause in a collective-bargaining agreement. 29 U.S.C. §157.

1.

The Respondent is an IBEW local representing approximately 4000 employees under multi-employer or stand-alone contracts. The Respondent maintains a union hall in Detroit, Michigan, where it conducts its business and holds member meetings. The Charging Party, Ryan Greene, is employed in a bargaining unit represented by the Respondent at Paramount Industries, located in Crosswell, Michigan. The Paramount facility is approximately a 2-hour drive from the Respondent’s union hall.

On October 1, 2014, the Respondent announced that it was implementing a policy governing resignation of

membership and opting out of dues deductions. The written policy, entitled “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations,” recites:

WHEREAS members have the ability to opt out of membership in the Union and applicable dues deduction agreements consistent with the requirements of applicable agreements *or* authorizations and relevant state and federal laws.

WHEREAS the loss of membership or financial contribution in IBEW Local 58 results in the loss of substantial rights of members and access to member-only benefits. The loss of such rights and benefits have an adverse effect on our members.

WHEREAS IBEW Local 58 has had experiences in the past where members have lost their membership through fraudulently submitted paperwork that has created a hardship on the victim of the fraud.

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.

The Respondent’s business manager, Michael Richard, testified that he wrote the policy, which was then communicated to the Respondent’s staff and elected officers, posted on the union hall’s message board, and sent to the stewards. Richard explained that he wrote the policy anticipating the expiration of the Respondent’s large multi-employer contracts because he wanted a “clear-cut, simple way for a member who so desired to resign membership[.]” According to Richard, he “wanted that policy out there well in advance of the expiration of the three main contracts so there’d be no confusion should the – should a member desire to resign once the union security drops out of the three main contracts.” Richard testified that in 2007 or 2008, he heard that a different local union had problems with members fraudulently removing other members from its hiring-hall list and Richard wanted to

prevent such problems in his local. However, contrary to the policy's preamble, Richard further testified that he knew of no similar instances of fraud involving the Respondent.

Richard also testified that the only employee to resign from the Respondent following implementation of the new policy was the Charging Party in this case, Ryan Greene. Greene sent a letter to the Employer stating his intent to resign from the Respondent. The Employer forwarded the letter to the Respondent, which called Greene to verify his identity using the telephone number that it had on file. The Respondent then accepted Greene's resignation.

Greene ultimately filed a timely unfair labor practice charge against the Respondent, and the General Counsel issued a complaint, alleging that the Respondent's maintenance of the policy was unlawful.

II.

After a hearing, the administrative law judge dismissed the complaint, concluding that the policy was limited to the designation of facially noncoercive procedures for effectuating the resignation of membership and the revocation of prior authorizations for the deduction of dues. The judge left open the possibility that enforcement of the policy might be unlawful, but observed that the "mere maintenance of *this* policy does not, on its face, amount to restraint or coercion prohibited by Section 8(b)(1)(A)" because the policy "does not, on its face, threaten, prohibit, or penalize members from resigning, or bar resignations at certain times, or render such resignations ineffective to avoid union sanction."

With respect to the Respondent's policy as to revocation of dues-deduction authorizations, the judge asserted that "[d]ues authorization agreements are an internal union matter that do not implicate Section 8(b)(1)(A) unless contrary to an overriding policy contained in national labor law." He found that the Respondent's policy was lawful because it did not "effectively preclude" revocation, and he rejected application of the principle that revocation procedures established by a union may not vary from an employee's prior agreement to dues checkoff, concluding that the record here "does not speak" to that issue.

III.

In light of well-established Board precedent, we have no difficulty concluding that the Respondent's policy, on its face, violates Section 8(b)(1)(A) in both respects alleged by the General Counsel.

A.

For more than 30 years, and with the Supreme Court's approval, the Board has adhered to the principle that "any restrictions placed by a union on its members' right to resign . . . are unlawful" because, among other reasons, "when a union seeks to delay or otherwise impede a member's resignation, it directly impairs the employee's Section 7 right to resign or otherwise refrain from union or other concerted activities."¹ Whatever legitimate interests a union may have for restricting the right to resign are immaterial: "regardless of their legitimacy, the union's interests simply cannot negate or otherwise overcome fundamental Section 7 rights."² The Board has also long held that a union's mere maintenance of a rule restricting member resignations is unlawful.³ Such a rule may discourage members from exercising their right to resign even if the rule has not been enforced.⁴

The issue here, then, is whether the Respondent's policy amounts to a restriction on members' right to resign. We conclude that it does. We thus reject the view of the judge and our dissenting colleague that the policy is merely a set of modest procedural requirements that do not impose any real burden on members who wish to resign.⁵

The Respondent's policy requires members (1) to "appear[] in person" at the union hall and (2) to "show picture identification" or (3) if the "member feels that appearing in person" would be an "undue hardship," to

¹ *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1333 (1984). See *Pattern Makers' League of North America v. NLRB*, 473 U.S. 95, 103-105 (1985).

² *Neufeld Porsche-Audi*, supra, 270 NLRB at 1334.

³ See, e.g., *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311, 311 (1983) (mere maintenance of a provision in the union's constitution restricting withdrawals from membership "restrains and coerces employees, who may be unaware of the provision's unenforceability, from exercising their Section 7 rights"); *Newspaper Guild Local 3 (New York News)*, 271 NLRB 1251 (1984) (union's maintenance of a constitutional provision prohibiting resignations during a strike or lockout violated Section 8(b)(1)(A)); *Auto Workers Local 148, (McDonnell-Douglas)*, 296 NLRB 970, 970 (1989) ("It is settled law that any restrictions placed by a union on its members' right to resign are unlawful . . .").

⁴ See *Sheet Metal Workers Local 73 (Safe Air)*, 274 NLRB 374, 375 (1985), enfd. 840 F.2d 501 (7th Cir. 1988).

⁵ Our dissenting colleague would apply *Scofield v. NLRB*, 394 U.S. 423 (1969), and ask whether the Respondent's new rule reasonably served a legitimate union interest. But, as explained by both the *Scofield* Court and the *Neufeld Porsche-Audi* Board, that standard cannot shield union rules that impair "a policy Congress has imbedded in the labor laws." *Scofield*, 394 U.S. at 430; *Neufeld Porsche-Audi*, supra, 270 NLRB at 1333. Among the policies imbedded in the Act is the policy reflected in Sec. 7 to afford employees the right freely to resign their union membership. And as the *Neufeld* Board emphasized, union rules that substantially burden that right are unlawful. *Neufeld*, 270 NLRB at 1333. As demonstrated below, the Respondent's rule imposes such a burden here.

contact the Union to make unspecified “other arrangements” to verify their identity. On its face, the challenged policy communicates the Union’s intention to make resignation more difficult for members than it had been, and it imposes a significant burden on union members who wish to exercise that right.⁶

That the combined “in person” and “picture identification” requirements restrain resignation is obvious. The burden the policy imposes on members is easy to see. Members might live or work some distance from the union hall as does Greene, who lives 2 hours away, and appearing there “in person” would surely cost them time and money—to say nothing about resigning members who wished to avoid a face-to-face encounter with a union representative responsible for administering a policy that deems resignation harmful to members.⁷ Indeed, the prospect of such face-to-face encounters could present a particularly significant impediment for members who wish to resign during a strike or lockout. The “picture identification” requirement, in turn, creates an obstacle to resignation for any member who lacks such identification and who must acquire it, if he can—a process that also might require time and money, apart from the burden imposed on members who, like some in our society, object to “picture identification” as a matter of religion or principle.⁸

The policy’s alternative procedure—allowing for “other arrangements” in cases of “undue hardship”—does not save it. That procedure also imposes its own burden on members—amounting to an attempt to “delay or otherwise impede” a member’s resignation (in the words of the Board’s seminal decision in this area)⁹—and creates uncertainty about whether unfettered access to resignation will be granted *at all* if a member is unable to negotiate other arrangements (instead of appearing in person) to the satisfaction of the Union. Notably, the policy is silent about what such “other arrangements” might be or

how the Union will exercise its apparent discretion to determine whether the arrangements are sufficient.¹⁰ What is clear, however, is that the mere prospect of having to follow such an uncertain and potentially confrontational process—obviously more than a ministerial matter—would tend to discourage some union members from pursuing resignation.

Certainly, a union member who wishes to resign can be required to take minimal affirmative steps to effectively communicate his intention to the union, such as putting the resignation in writing and sending it to a designated union officer.¹¹ The challenged policy, however, demands far more of union members than our decisions permit. Thus, we take issue with the judge’s description of the General Counsel’s position as “unprecedented”: that the Respondent’s policy may be novel does not mean that it presents a difficult legal issue. The Board has “pronounced clearly that *any* restrictions on resignations from unions [are] invalid.”¹² Given the significant burden they place on union members, the requirements imposed by the Respondent’s policy fall within that longstanding pronouncement.

B.

Just as the Respondent’s policy unlawfully restricts the Section 7 right to resign union membership, so does it impermissibly restrain the revocation of dues checkoff authorizations, which also implicates the Section 7 right to refrain from union activity.¹³

1.

The Board has held, adopting the decision of an administrative law judge, that “a requirement that employees appear in person at a union hall in order to revoke checkoff would impose, inherently, an unconscionable impediment to the free choice conferred by Section 302(c)(4) of the Act,” which authorizes dues checkoff.¹⁴

⁶ While, as noted above, at least one of the Union’s primary justifications for imposing these changes was revealed at the hearing to be factually untrue, whether the Union’s actions were for good reasons is irrelevant to our analysis.

⁷ Our colleague points out that Greene successfully resigned his membership. Again, however, the allegation here is that the Respondent’s rule was unlawful on its face. Accordingly, whether Greene actually was restrained or coerced in exercising his right to resign is immaterial. See *Engineers & Scientists Guild*, supra, 268 NLRB at 311.

⁸ See generally *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) (upholding state law requiring government-issued photo identification to vote against Fourteenth Amendment facial challenge, after concluding that state interests were sufficiently weighty to justify burdens on right to vote). As *Neufeld Porsche-Audi* makes clear, of course, the Board does not engage in a balancing of interests to determine whether a union may burden a member’s right to resign.

⁹ *Neufeld Porsche-Audi*, supra, 270 NLRB at 1333.

¹⁰ Our dissenting colleague contends that the Respondent’s policy allows each member to determine for himself what constitutes an “undue hardship” and what “other arrangements” are sufficient to verify his identity. We disagree. In our view, the policy makes clear that whether and what alternative means are acceptable in a particular case is subject to the Respondent’s consent. Thus, under the rule, only “other arrangements that *verify* the identification of the member” are sufficient (emphasis added). At a minimum, the policy—as a rule adopted by the Respondent and imposed on members—can reasonably be interpreted to give ultimate authority to the Respondent.

¹¹ See *McDonnell-Douglas*, supra, 296 NLRB at 971.

¹² *Sheet Metal Workers Local 73*, supra, 274 NLRB at 375 (emphasis in original).

¹³ See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 327 (1991) (“Section 7 protects both the right to refrain from belonging to a union and the right to refrain from contributing money to it . . .”).

¹⁴ *Newport News Shipbuilding and Dry Dock Co.*, 253 NLRB 721, 731–732 (1980), *enfd.* 646 F.2d 117 (4th Cir. 1981). Sec. 302(c)(4)

As explained, the Respondent's policy establishes an "in person" requirement for dues checkoff revocation, and its "undue hardship" exception is insufficient to mitigate the burden imposed by the policy. On that basis, we find that maintenance of the Respondent's policy violates Section 8(b)(1)(A).

2.

In any event, the Respondent's policy is unlawful for an independent reason: the Respondent simply had no authority to unilaterally impose any restriction on the revocation of dues checkoff, much less the "in person"/"picture identification" or "other arrangements" requirements reflected in its policy.

As Section 302(c)(4) of the Act provides, dues checkoff, to be lawful, must be authorized by individual employees in writing. "The Board has held that a checkoff authorization . . . is a contract between an employee and his employer."¹⁵ In *Cameron Iron Works*, 235 NLRB 287, 289 (1978), enf. denied 591 F.2d 1 (5th Cir. 1979), a union and an employer purported to modify the revocation-related terms of employees' existing checkoff authorizations by means of a collective-bargaining agreement provision. The Board decisively rejected that effort, observing:

[T]o hold that an employer and union can, by their subsequent agreement, change the terms of this statutorily required contract without obtaining the employee's signature on a new authorization card reflecting the parties' agreement would frustrate the purposes of Section 302(c)(4). *Thus, if an employer and union are free to change the revocation procedure without the assent of the individual employees affected thereby, the terms of the written agreement by which the employee authorized dues deduction become meaningless and the employee loses the protection intended by the requirement of Section 302(c)(4) of a "written assignment."*

235 NLRB at 289 (emphasis added).

Here, the Union's business manager, Michael Richard, readily acknowledged in his testimony that the policy at issue was a "new" policy, implemented on October 1, 2014.¹⁶ It is undisputed that the policy was established

permits the deduction of union dues from employees' wages if "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).

¹⁵ *Electrical Workers IBEW Local 2088*, supra, 302 NLRB at 327.

¹⁶ Our dissenting colleague unreasonably questions our conclusion that the Respondent changed its policy regarding the revocation of dues-checkoff authorizations. In fact, Richard himself admitted the

by the Union unilaterally, and it is clear from the terms of the policy, on its face, that it was imposing new requirements. The policy recited both the new requirements that it imposed and announced that "any other requirements . . . [would] remain in place."

The judge correctly recognized the possibility that the Respondent's policy was unlawful because it was inconsistent with the (contractual) terms of members' existing checkoff authorizations. But he erred in concluding that the evidentiary record was not sufficient to support finding a violation on this ground. It is clear from both the face of the policy and the relevant testimony that this "new" policy unilaterally imposed new restrictions on dues checkoff authorizations, without the assent of individual members. Richard's testimony establishes that the policy was new and was announced at his initiative, and he acknowledged that the policy was thereafter posted on the message board at the union hall. There is no suggestion that any individual member, much less all members, had agreed to the policy. It follows, then, that by unilaterally imposing new requirements, the Respondent unlawfully restrained members in revoking their dues checkoff authorizations.¹⁷

policy at issue was new. The Union's counsel questioned Richard as follows:

Q. On October 1st, 2104 [sic], did the Local implement a new policy regarding the resignation of membership and revocation of dues deduction?

A. Yes.

(Tr. 34). Richard's subsequent testimony about why he implemented the policy confirms that the requirement that employees appear in person at the Union's hall or otherwise verify their identity was new. (Tr. 35-36.)

¹⁷ Although the General Counsel has not clearly pursued a violation on this theory, it is well within established Board practice to find a violation under the circumstances of this case, where all of the underlying facts are undisputed. The Board, with court approval, has repeatedly found violations for different reasons and on different theories from those of administrative law judges or the General Counsel, even in the absence of exceptions, where the unlawful conduct was alleged in the complaint. See, e.g., *Hawaiian Dredging Construction Co.*, 362 NLRB No. 10, slip op. at 2 fn. 6 (2015); *Pepsi America, Inc.*, 339 NLRB 986 (2003); *Jefferson Electric Co.*, 274 NLRB 750, 750-751 (1985), enf. 783 F.2d 679 (6th Cir. 1986). See also, e.g., *NLRB v. WTVJ, Inc.*, 268 F.2d 346, 348 (5th Cir. 1959) (enforcing Board decision that found a violation on a theory different from the one relied upon by the judge, despite the General Counsel and the charging party's failure to except to the judge's decision). Here, the violation is alleged in the complaint, the factual basis for the violation is clear from the record, the law is well established, and no due process concerns are implicated. Acting Chairman Miscimarra dissented in *Hawaiian Dredging*, but not on the basis that the Board majority was precluded from finding a violation on a theory the General Counsel had not pursued.

AMENDED CONCLUSIONS OF LAW

1. Paramount Industries, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, Local 58, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, is a labor organization within the meaning of the Act.

3. By maintaining its “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations,” the Respondent restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act and thereby violated Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order that the Respondent rescind its “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations.”

ORDER

The National Labor Relations Board orders that the Respondent, Local 58, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining its “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations.”

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations.”

(b) Within 14 days after service by the Region, post at its union hall in Detroit, Michigan, and other places where notices to its members are customarily posted, copies of the attached notice marked “Appendix.”¹⁸ Copies of the notice, on forms provided by the Regional

¹⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Director for Region 7, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 7 signed copies of the notice in sufficient number for posting by the Employer at its Crosswell, Michigan facility, if it wishes, in all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 10, 2017

Philip A. Miscimarra, Acting Chairman

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PEARCE, dissenting.

The issue presented here is whether a union policy providing that members wishing to resign do so in person at the union hall using photo identification or, if they so choose, to make other arrangements to verify their identities, unlawfully restricts a member’s right to resign from the union. The administrative law judge exhaustively examined decades of relevant law and found neither a supporting example, nor a rationale, to justify finding this policy to be unlawful. Accordingly, he reasonably dismissed the complaint against Respondent, IBEW Local 58. Nevertheless, my colleagues find that Local 58’s policy—which merely sets forth resignation procedures—runs afoul of the Act by unlawfully restricting the right to resign union membership. I cannot agree.

The Supreme Court has acknowledged that unions enjoy a wide range of reasonableness in setting their own

rules, explaining that Section 8(b)(1)(A) of the Act “leaves a union free to enforce a properly adopted rule which 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). My colleagues rely on *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1333, 1336 (1984), and its progeny to argue that rules restricting members’ right to resign are unlawful. However, those cases do not speak to the rule at issue. Rather, *Neufeld* and related cases address rules that impede the members’ ability to resign by narrowly limiting the time period for resignation or burdening the ability to resign through fines or dues assessments. Thus, for example, rules that prohibit resignations during a strike,¹ limit resignations to designated window periods,² or condition resignation on members’ first satisfying all outstanding financial obligations³ have been invalidated under *Neufeld*. In those cases, the Board identified significant roadblocks to resignations imposed by the rules that chilled employees’ exercise of their statutory rights.

No such roadblocks exist here. Indeed, the Board has never invalidated a rule that simply designates the method by which members can submit their resignations. To the contrary, the Board has noted that unions can lawfully designate such procedures so long as they are not so burdensome as to restrict the right to resign. For example, in *United Automobile, Aerospace and Agricultural Workers Local 148 (McDonnell-Douglas)*, 296 NLRB 970, 971 (1989), the Board, in agreement with the Sixth Circuit in *Auto Workers v. NLRB*, 865 F.2d 791 (1989), stated that the requirement that a resignation policy directing members to submit a written resignation to a designated officer was lawful because it served the legitimate purpose of enabling the union to maintain an accurate membership list and “could not reasonably be construed as restraining or coercing members in the exercise of their Section 7 rights”

The policy instituted by the Respondent in this case, unlike the rules invalidated by the Board, does not restrict resignation and, in my view, cannot reasonably be construed as such. Instead, it outlines the lawful procedures by which its members can securely submit their resignations and serves the legitimate union interest in

preventing resignation fraud. I would therefore find that the Respondent’s policy “impairs no policy Congress has embedded in the labor laws” under *Scofield*, supra, 394 U.S. at 430.

I also find that the “policy reflects a legitimate Union interest” and is “reasonably enforced against union members who are free to leave the union and escape the rule.” Id. The policy’s preamble plainly sets forth members’ unqualified right to resign: “members have the ability to opt out of membership in the Union and applicable dues deduction agreements” The preamble then explains that certain safeguards are necessary to prevent the “loss of substantial rights of members and access to member-only benefits.” Despite the clarity of purpose conveyed by such language, my colleagues appear to imply that the preamble’s next sentence (stating that “The loss of such rights and benefits have an adverse effect on our members”) reflects the Respondent’s antipathy towards member resignations. To the contrary, and as the preamble clearly states, resignation from the Respondent in fact results in the loss of benefits and other rights for the resigning members themselves. The preamble further explains that it seeks to safeguard its members from losing these important benefits through fraudulent resignations, achieved through fraudulently submitted paperwork.⁴ Thus, the preamble cannot be reasonably read to define a restrictive policy but rather emphasizes members’ right to resign with necessary safeguards to prevent fraudulent resignations and the resulting loss of rights and benefits.

Having explained its purpose, the policy sets forth two avenues by which members can verify their identities. The first method allows members wishing to resign to “do so in person at the Union Hall . . . and show picture identification with a corresponding written request specifically indicating the intent of the member.” The Respondent typically holds meetings and posts notices at its Union Hall. It therefore makes sense that the Respondent would request that members submit their resignations at the central location where it conducts all of its business.

⁴ My colleagues characterize the policy’s justification as both legally “irrelevant” and “factually untrue.” To be sure, under *Neufeld*, rules that are found to unlawfully restrict member resignations are not saved if they serve a legitimate union interest. But because, as described below, I would find that the policy here does not restrict the right of union members to resign from membership, I would also reach the issue of the union interest’s legitimacy. In my estimation, the policy’s justification of avoiding fraudulent resignations is unquestionably legitimate. Moreover, I note that Business Manager Richard clearly testified that he put together the policy because he had heard that resignation fraud occurred at other locals and resulted in loss of members’ benefits. I would not require a union to have had its own local members victimized before instituting a prophylactic rule.

¹ *Neufeld*, supra 270 NLRB at 1333.

² See, e.g., *Oil, Chemical and Atomic Workers Local 8-406 (IMTT – Bayonne)*, 303 NLRB 965, 966 (1991) (requiring resignations within 10 days preceding members’ anniversary date).

³ See, e.g., *Professional Association of Golf Officials*, 317 NLRB 774 (1995) (requiring payment of all dues and assessments).

While my colleagues fault the first method as restrictive to members who would balk at having to travel to the Respondent's place of business or who do not possess a photo ID, the policy presents an alternative means to verify members' identities. This second method provides 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." Significantly, what constitutes an "undue hardship" is not determined by the Respondent but is instead left to the discretion of the members themselves, as the policy clearly states. Thus, while my colleagues would fault the proviso's broad language as onerous, and speculate about potentially hostile confrontations with Union representatives—a speculation contradicted by the record—I would find that the broad language of the policy, permitting members to define for themselves what constitutes an "undue hardship" and affording them the opportunity to make "other arrangements," leaves room for a wide range of means by which members can verify their identities, consistent with their circumstances and principles.

I similarly disagree with my colleague's assertion that the policy would "delay or impede" member resignations. Unlike the rules invalidated by the Board that included lengthy waiting periods, the policy here includes no such delay; resignation is effective immediately upon submission at the Respondent's hall or upon verifying the identity of the employee resigning. This procedure is as quick as, if not quicker than rules requiring signed and mailed member resignations, which my colleagues must acknowledge are lawful. Indeed, my colleagues ignore the plain reality that the Charging Party in this case availed himself of those "other arrangements" and resigned from the Respondent without incident. There is no allegation that by sending a resignation letter to the Employer that triggered a verification phone call from the Respondent, the Charging Party was delayed, impeded, or otherwise restricted from resigning. To the contrary, Business Agent Richard testified that he telephoned the Charging Party at the number on file with the Respondent, verified that the Charging Party had submitted the resignation letter, and "that was it."⁵

⁵ My colleagues argue, on the one hand, that the evidence regarding the instance in which an employee availed himself of this policy is irrelevant because this case involves a facial challenge to the policy. On the other hand, however, my colleagues speculate that the policy's provision providing employees with alternate means to verify their identities imbues the Respondent with "ultimate authority" to accept or reject those verifications. While I recognize that this case involves a facial challenge to the Respondent's policy, I find that employees would reasonably read the policy to allow a variety of alternatives for

Accordingly, I would find that the Respondent's policy falls well within the guidelines set forth by the Supreme Court in *Scofield*. The policy reflects on its face a legitimate union interest—preventing fraudulent resignations—impairs no policy Congress has embedded in the labor laws, and is reasonably enforced against the Respondent's members who are free to resign and escape the rule. In so finding, I reiterate that the procedures delineated in the policy are not restrictions on union resignation and employees would not read them as such; rather, they are reasonable procedures by which members can securely resign their membership. Any employee who would feel restricted by delivering a written resignation with picture identification to the Respondent's hall is free to make other arrangements to verify his identity. I therefore agree with the judge, contrary to my colleagues, that the Respondent's policy does not violate the Act.

For the same reasons, the Respondent's dues deduction policy is lawful. While restrictions on dues deduction cancellations, unlike membership resignations, may be independently authorized in dues agreements, there is no evidence that the policy added any restriction. The policy simply clarifies the means by which members can submit their cancellation of dues deductions, with the same provisions for alternative arrangements.⁶

In reaching the opposite result and finding the dues deduction policy unlawful, my colleagues additionally stretch to embrace a unilateral change theory that was neither alleged in the complaint, litigated by the General Counsel, nor raised on exception to the Board. Consequently, because this theory was not part of the case, the parties had no opportunity to submit evidence (such as the original dues agreements) to support or refute such a theory. Nonetheless, my colleagues infer what the original dues agreement must say, no matter that they have not read it (because it is absent from the record before us). While I certainly acknowledge the Board's discretionary authority to consider a theory not championed by

verification as illustrated by the Respondent's reasonable application of the policy.

⁶ Contrary to my colleagues, I do not find that the Respondent's policy runs afoul of Sec. 302(c)(4) because the policy does not render employees' dues assignment to be irrevocable. Indeed, the policy itself reiterates that employees have the right to opt out of having their dues deducted. Further, while my colleagues cite *Newport News Shipbuilding and Dry Dock Co.*, 253 NLRB 721, 731-732 (1980), for the proposition that requiring in-person dues revocation is "unconscionable," the Board in *Newport News* based this conclusion, in part, on the union's failure to notify employees of the new requirement prior to rejecting their proffered resignations. Moreover, the revocation procedure in *Newport News* did not include any alternative arrangements. Here, as discussed, the letter and phone call were sufficient for the Respondent to process the Charging Party's dues revocation.

any party to the litigation, I fail to see how the record of this case makes such an exercise necessary or wise. Consequently, and contrary to my colleagues, I would not stretch to manufacture evidence out of inferences in order to consider whether the dues deduction policy also violates the Act as an unalleged unilateral change.

Dated, Washington, D.C. February 10, 2017

Mark Gaston Pearce, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT maintain the “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations” announced on October 1, 2014.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL rescind the “Policy Regarding Procedure for Opting out of Membership Rights, Benefits, and Obligations” announced on October 1, 2014.

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

The Board’s decision can be found at www.nlr.gov/case/07-CB-149555 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.



Robert M. Buzaitis, Esq. (NLRB Region 7), of Detroit, Michigan, for the General Counsel.

Robert D. Fetter, Esq. (Miller Cohen, PLC), of Detroit, Michigan, for the Respondent.

Amanda K. Freeman, Esq. and Glenn M. Taubman, Esq. (National Right to Work Legal Defense Foundation), of Springfield, Virginia, for the Charging Party.

DECISION

DAVID I. GOLDMAN, Administrative Law Judge. In this case a union adopted a membership policy that provides that members who want to resign membership or revoke a dues-checkoff authorization are to resign or revoke in writing, in person, and show identification. The policy also states that if any member feels that appearing in person poses an undue hardship, he or she may contact the union hall and make other arrangements to verify identify.

The government contends that the maintenance of this policy violates Section 8(b)(1)(A) of the National Labor Relations Act (Act) on its face, without regard to motive, enforcement, application, or any record evidence that an employee’s failure to comply with the policy has consequences of any kind. No issue is presented, and therefore I do not reach the issue, of whether the policy is enforceable or valid—in other words, whether or not the policy could serve as a defense in a case alleging unlawful action by the union against an employee who had attempted to resign or revoke in a manner inconsistent with the policy. However, as to the issue alleged, I find that the mere maintenance of this policy, on its face, does not abridge Section 8(b)(1)(A). Accordingly, I dismiss the complaint.

STATEMENT OF THE CASE

On April 6, 2015, Ryan Greene filed an unfair labor practice charge alleging violations of the Act by the International Brotherhood of Electrical Workers Local Union No. 58, AFL–CIO (Union or Respondent) docketed by Region 7 of the National Labor Relations Board (Board) as Case 07–CB–149555. Based on an investigation into this charge, on June 12, 2015, the Board’s General Counsel, by the Regional Director for Region 07 of the Board, issued an order consolidating this case with a related case and issued a consolidated complaint and notice of hearing alleging that the Union had violated the Act. On June 24, 2015, the Union filed an answer and affirmative and other defenses denying all alleged violations of the Act. On July 23, 2015, the General Counsel, by the Regional Director, issued an order severing the instant case from the related case with which it had been consolidated, approved withdrawal of the related case, and withdrew certain allegations from the consolidated complaint.

A trial was conducted in this matter on July 30, 2015, in Detroit, Michigan. Counsel for the General Counsel, the Union, and the Charging Party, filed posttrial briefs in support of their positions by September 14, 2015.¹ On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

Paramount Industries, Inc. (Paramount) is, and at all material times has been, a corporation with an office and place of business in Crosswell, Michigan, engaged in the manufacture, non-retail sale, and distribution of lighting equipment. In conducting its operations during the calendar year ending December 31, 2014, Paramount sold and shipped from its Crosswell, Michigan facility goods valued in excess of \$50,000 directly to points outside the State of Michigan. At all material times, the Employer has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act. At all material times, the Union has been the exclusive collective-bargaining representative, based on Section 9(a) of the Act, of a bargaining unit composed of the following employees of Paramount: all employees described in Exhibit A of the collective-bargaining agreement between the Union and Paramount effective May 14, 2014, through May 13, 2017; but excluding supervisor and guards as defined by the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

On October 1, 2014, the Union announced implementation of a policy resolving that any member desiring to opt out of membership or dues deduction must do so in person, at the union hall, showing picture identification and supplying a written request indicating the members' intent. The policy also resolves that that any member who feels that appearing in person at the union hall poses an undue hardship may contact the union hall and make other arrangements to verify identity. This policy, titled "policy regarding procedure for opting out of membership rights, benefits, and obligations," states:

IBEW Local 58 has implemented the following policy:

WHEREAS members have the ability to opt out of membership in the Union and applicable dues deduction agreements consistent with the requirements of applicable agreements *or* authorizations and relevant state and federal laws.

WHEREAS the loss of membership or financial contribution in IBEW Local 58 results in the loss of substantial rights of members and access to member-only benefits.

¹ The Respondent filed a posttrial motion to strike portions of the Charging Party's brief. The Charging Party responded with a motion to strike the Respondent's motion to strike, to which the Respondent filed a response. These motions are denied. In reaching the decision and recommended order in this case, I have not considered matters outside the record and have not relied upon any filings of the parties that could be construed as "reply" briefs.

The loss of such rights and benefits have an adverse effect on our members.

WHEREAS IBEW Local 58 has had experiences in the past where members have lost their membership through fraudulently submitted paperwork that has created a hardship on the victim of the fraud.

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.

Analysis

The complaint alleges that the Union's maintenance of the policy is violative of Section 8(b)(1)(A) of the Act. At trial, counsel for the government made clear that the theory of violation is limited to the claim that mere maintenance of the policy "is unlawful on its face" (Tr. 10, 22) because a union cannot prescribe any "particular method to" resign or cancel dues check off. (Tr. 10, 22, 24-25.) In confirmation of this position, the General Counsel's case at trial involved no witness, and, in addition to the formal papers, the introduction of one exhibit into evidence: a copy of the policy. The General Counsel then rested.

As discussed below, I conclude that the General Counsel's contention has no support in Board precedent. The General Counsel's claim that a union's adoption of "any" rule designating a method for resignation violates the Act on its face is without merit. While some union resignation rules that are squarely invalid and unenforceable have been found to violate Section 8(b)(1)(A) on their face, this has never been the case with a rule, such as this one, that is limited to the designation of facially noncoercive procedures for effectuating the resignation/revocation. Whether or not this union policy could serve as a defense in a case alleging unlawful action against an employee who had attempted to resign or revoke in a manner inconsistent with the policy, the mere maintenance of *this* policy does not, on its face, amount to restraint or coercion prohibited by Section 8(b)(1)(A).

1. The policy's procedures for resignation from the Union

Section 8(b)(1)(A) provides that it is an unfair labor practice for a labor organization:

to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the ac-

quisition or retention of membership therein[.]

The Supreme Court has rejected a “literal reading” of 8(b)(1)(A) that would find that the mere fact that a union acts in response to the exercise of a Section 7 right constitutes “restraint” or “coercion” within the meaning of 8(b)(1)(A). *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 178 (1967). In particular, unions are afforded wide latitude in promulgating rules governing their internal union affairs. *Allis-Chalmers*, supra at 195 (in enacting Sec. 8(b)(1)(A) “Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union’s internal regulations to affect a member’s employment status”). Notably, the Supreme Court recognized in *Allis-Chalmers*, 388 U.S. at 190–191, that any parallel to the Section 8(a)(1) prohibition on an employer’s restraint and coercion of employees in the exercise of Section 7 rights,

clearly is inapplicable to the relationship of a union member to his own union. Union membership allows the member a part in choosing the very course of action to which he refuses to adhere, but he has of course no role in employer conduct, and nonunion employees have no voice in the affairs of the union.

Unlike with a union’s membership rule, the threat to employment is always implicit in any employer regulation of employee conduct. Thus, as the Supreme Court has explained, “[t]he Board has long held that § 8(b)(1)(A)’s legislative history requires a narrow construction which nevertheless proscribes unacceptable methods of union coercion, such as physical violence to induce employees to join the union or to join in a strike.” *Scofield v. NLRB*, 394 U.S. 423, 428 fn. 4 (1969). The Board’s approach to 8(b)(1)(A) “emphasizes the sanction imposed rather than the rule itself and does not involve the Board in judging the fairness or wisdom of particular union rules.” *Scofield*, 394 U.S. at 429. This is because the policing of internal union rules places the Board unnaturally in the midst of the union’s internal relationship with its members, each of whom has voluntarily chosen to be a member of the union.

Notwithstanding this the Board and the Supreme Court have recognized that restrictions on resignation are at odds with the premise of voluntary unionism that is a fundamental policy of the Act.²

In *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984, 985 (1982), enf’d. denied 725 F.2d 1212 (9th Cir. 1984), the concurrence (Chairman Van de Water and Member Hunter)

² As the Supreme Court recognized in *Pattern Makers’ League v. NLRB*, 473 U.S. 95 (1985), the wide latitude provided a union to control its internal affairs to some extent rests on the ability of employees to freely resign from the union and escape union discipline. As the Court put it: “We believe that the inconsistency between union restrictions on the right to resign and the policy of voluntary unionism supports the Board’s conclusion that [a union rule prohibiting resignations during a labor dispute] is invalid.” *Pattern Makers’*, 473 U.S. at 105. See also, *Scofield*, 394 U.S. at 423 (“Section 8(b)(1)(A) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against members *who are free to leave the union and escape the rule*”) (emphasis added).

concluded that “we would find any restriction imposed upon a union member’s right to resign to be unreasonable and, therefore, we would find the imposition of any fines or other discipline premised upon such restrictions to be violative of Section 8(b)(1)(A).” 263 NLRB at 988.

In *Machinists, Local Lodge 1414 (Neufeld Porsche-Audi, Inc.)*, 270 NLRB 1330 (1984), the Board adopted the views expressed by the concurrence in *Dalmo Victor*. In *Neufeld Porsche* the issue presented was whether a union violated 8(b)(1)(A) by imposing a fine against an employee after he resigned his membership in the union. 270 NLRB at 1330. The international union’s constitution provided that it was improper conduct for a member to accept work at a struck (or locked out) facility, and that resignations tendered during the time, or 14 days before, a primary picket line was maintained were not effective as resignations. Four months into a strike, a striking employee, Locki, personally delivered a letter of resignation to the union’s offices, and a few days later returned to work. Internal union charges were filed against Locki for violating the constitution by returning to work during the strike, and a fine imposed against him.

The Board in *Neufeld Porsche*, expressly adopting the view of the concurrence in *Dalmo Victor*, concluded that any “restriction a union may impose on resignation, is invalid, and that the Respondent violated Sec. 8(b)(1)(A) by imposing a fine against Locki pursuant to the [union constitution].” 270 NLRB at 1331. This was true notwithstanding the union’s legitimate interests in membership rules that restrict resignations to maintain strike solidarity and to protect the interests of striking employees, as a rule restricting resignation “substantially impairs fundamental policies embedded in labor laws.” *Id.* at 1333. “For regardless of their legitimacy, the union’s interests simply cannot negate or otherwise overcome fundamental Section 7 rights.” *Id.* at 1334.

In *Pattern Makers’ League v. NLRB*, 473 U.S. 95 (1985), the Supreme Court approved of the Board’s position in *Neufeld Porsche*. The Court in *Pattern Makers’* considered a union’s fining of ten members who attempted to resign and returned to work during a strike in violation of the union’s internal rule that resignations would not be accepted during a strike or lockout (or when one appeared imminent). The Court decided the question of “whether a union is precluded from fining employees who have attempted to resign when resignations are prohibited by the union’s constitution.” 473 U.S. at 101. The Court endorsed the Board’s view in *Neufeld Porsche* that rules “restricting” union members’ resignations were unenforceable against employees and no defense to union 8(b)(1)(A) liability for fining or otherwise disciplining employees who had sought to resign.³

Since *Neufeld* and *Pattern Makers’*, union rules that restrict resignation have been unequivocally understood to be unen-

³ Notably, however, the Board decision upheld by the Supreme Court in *Pattern Makers’*, rejected as “inappropriate” the claim that the union’s unenforceable constitutional provision on resignation be expunged. *Pattern Makers’ League (Rockford Beloit)*, 265 NLRB 1332, 1333 fn. 7 (1982), enf’d. 724 F.2d 57 (7th Cir. 1983), aff’d. 473 U.S. 95 (1985).

forceable by the union, and it is a violation of 8(b)(1)(A) to impose fines or discipline premised upon such resignation restrictions. However, the narrowed scope of the interpretation accorded the terms “restraint” and “coercion” under 8(b)(1)(A) (*Allis-Chalmers*, 388 U.S. at 178, 190–191; *Scofield*, 394 U.S. at 428 fn. 4), and the attendant emphasis on “the sanction imposed rather than the rule itself [that] does not involve the Board in judging the fairness or wisdom of particular union rules” *Scofield*, 394 U.S. at 429), remains a part of the statutory scheme.

Thus, only where the rule on its face squarely abridges resignation in a manner that has unequivocally been found to be unlawful to enforce, will the Board find a violation of 8(b)(1)(A) based on maintenance of the rule. Indeed, one must note that the concept of a facial “maintenance” violation of 8(b)(1)(A)—unrelated to enforcement or application—was unheard of before the mid-1980s and its rationale has never been fully explicated.⁴

Be that as it may, it is clear that “the legal principle that maintaining restrictions on the right of a union member to resign from membership is unlawful has been firmly settled for several years.” *Int’l Union of Operating Engineers, Local 399 (Tribune Properties)*, 304 NLRB 439 (1991). While the dramatic departure from prior case law has never been explained, the Board has found the maintenance of blatantly unenforceable union rules to be not only invalid as a defense to unlawful union efforts to fine or discipline employees who sought to resign,

⁴ *Engineers & Scientists Guild (Lockheed California)*, 268 NLRB 311 (1983), is often cited as the first case where the Board found that the maintenance of an invalid rule restricting resignation violated the Act. In fact, in *Lockheed*, the Board agreed with the ALJ that union violated the Act by enforcing its unreasonable constitutional provision restricting resignations through imposition of fines on employees who had resigned from the union and crossed a picket line. As a remedy, the Board ordered expungement of the constitutional resignation provision, finding that “the mere maintenance of such a constitutional provision restrains and coerces employees, who may be unaware of the provision’s unenforceability, from exercising their Section 7 rights.” *Id.* at 311. Notwithstanding this, the Board did not hold the provision unlawful (and did not amend the judge’s conclusion of law which did not include a finding that the provisions were unlawful). *Lockheed* is not a case in which the mere maintenance of an unreasonable internal rule violated the Act in the absence of unlawful enforcement.

The cited basis in many cases for the “facial” violation of 8(b)(1)(A) is often (if it is anything) the Board’s decision in *Neufeld*. However, in *Neufeld* both “[t]he issue presented” and the holding concerned whether “the Respondent violated Section 8(b)(1)(A) by imposing a fine against [an employee] for conduct that occurred after Locki resigned his membership in the Respondent.” In neither *Neufeld* nor the Supreme Court’s *Pattern Makers* decision was a facial “maintenance” violation alleged or found. Thus, while it is true that after *Neufeld* and *Pattern Makers* a union may not restrict the right of its members to resign, in those cases to “restrict” an employee from resigning meant more than merely maintaining a rule. *Neufeld*, supra at 1336 (“a union may not lawfully resign from membership. Accordingly, we find the Respondent violated Section 8(b)(1)(A) by imposing a fine on [employee] Locki for returning to work during the strike after he resigned his membership in the Respondent Union”).

but independently unlawful in their own right.⁵

Extant Board precedent recognizes a purely facial violation of 8(b)(1)(A) based on the maintenance of an internal union membership provisions that on their face prohibit resignation at certain times, or requirement payment of fines, dues, or levies, or purport to permit continued union control over employees who have resigned. These cases involve union resignation provisions that violate the principle that, consistent with our system of voluntary unionism, resignation must always be available to members so they are free to choose immunity from union discipline. But none of these cases provide grounds to stretch the reach of 8(b)(1)(A) to unprecedented lengths and find unlawful the maintenance of a union policy, such as that here, that merely prescribes a manner and procedure for resignation or revocation.

And stretching the reach of Section 8(b)(1)(A) to unprecedented lengths is precisely what the General Counsel is engaged in here, although he does not admit it.

As noted, the General Counsel advances a theory of a mere maintenance violation, because it is all there is. There is no evidence of application. There is no evidence that the Respondent has, in fact, restricted anyone from resigning.⁶ Indeed, it is unproven on the record what the effect of this “policy” is internally within the union. Does it even constitute a provision of the union’s constitution, bylaws, or rules which a member may be penalized for ignoring? See, R. Exh. 1 at Art. XXV. There is no evidence as to whether, even within the union, this “policy” provides any basis for action against a

⁵ See e.g., *Typographical Union (Register Publishing)*, 270 NLRB 1386 (1984) (adopting judge’s finding that maintenance of resignation provision allowing resignation only with consent of union violated 8(b)(1)(A)); *Sheet Metal Workers, Local 73 (Safe Air Inc.)*, 274 NLRB 374 (1985) (mere maintenance of union rule unlawful where it provided that no resignation would be accepted if offered in anticipation of or during pendency of charges lodged against member or during strike/lockout), enf’d. 840 F.2d 501 (7th Cir. 1988); *Teamsters Local 995 (Caesars Palace)*, 285 NLRB 828 (1987) (union unlawfully adopted and abided by resignation rules requiring 30-day notice; no resignation permitted unless all charges against member concluded and all financial obligations to union satisfied; union has right to delay until end of strike resignations tendered within 15 days of or during strike); *Birmingham Printing Pressmen’s Local*, 300 NLRB 7 (1990) (union unlawfully maintained “in force and effect” provision limiting resignation to members in good standing); *Birmingham Printing Pressmen’s Local No. 55*, 300 NLRB 1 (1990) (same); *UAW, Local 148 (Douglas Aircraft Co.)*, 296 NLRB 970 (1989) (union unlawfully maintained rule permitting resignation only if member was in good standing, not in arrears or delinquent in payments to union, and no internal charges filed; union rule also unlawful because resignation only good if mailed 10 days prior to end of fiscal year); *Professional Ass’n of Golf Officials*, 317 NLRB 774 (1995) (unlawful maintenance of rule where it barred resignation of members not in good standing).

⁶ The Union put on evidence about the one instance in which an employee has resigned since inception of the policy, and he mailed in a resignation—first to the employer, which forwarded it to the Union—and then a union business representative called the employee and verified the employee’s identity over the phone. The resignation was accepted.

member.¹⁹⁷

And this brings us to the central question: does this union policy “restrict” resignation on its face?

It does not, in any way that the term has ever been understood heretofore.

The Respondent’s policy affirms that “members have the ability to opt out of membership in the Union and applicable dues agreements,” and sets forth three procedures for resignation/ revocation that the General Counsel condemns: the member must appear at the union hall, provide picture identification, and a written request. However, the policy also states that the personal appearance of the member is not required if, in the member’s judgment, it poses an undue hardship to appear in person:

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.

Thus, the policy provides, on its face, that any member who “feels” that appearing in person is an undue hardship may make other arrangements—other than appearing in person—to verify identify.

As far as I can find, and as far as the parties have pointed out, there is *no* case in which the mere unlawful maintenance of a rule has been found (or even alleged) where the rule does not restrict resignation by barring it in a significant and substantive way: e.g., by prohibiting or rendering resignation ineffective during certain times, or barring resignation when certain external events (i.e. strikes) are occurring, or by requiring union consent or payment of union-imposed fees or fines as a condition of resignation. *Every* case in which the maintenance of a rule has been found unlawful involves a rule that restricts the right to resign by directly barring resignation in designated circumstances, or threatening post-resignation action against the employee, or by prohibiting resignation without submitting to union approval or financial levies. What these cases have in common is that they offend the Act’s principle of voluntary unionism because they involve a union rule that at certain times and in various ways, prohibit a member the freedom to choose immunity from union discipline through resignation.

There is simply *no* case where the restrictions on resignation in a rule alleged to be unlawful to maintain involve only procedures such as identification, putting the resignation in writing, or showing up to resign (and here, this last procedure does not apply if in the judgment of the member it poses an undue hardship). It is unprecedented to say that any of these conditions, *on their face* restrict anyone from resigning, or stop anyone from choosing immunity from union discipline.

Of course it is possible that the application or enforcement of such rules against a member might operate to create a restriction on resignation—but that is not this case.

The General Counsel obfuscates the unprecedented nature of

⁷ Surely, even the General Counsel would agree that if there is no basis for enforcing the policy through union discipline or control over an employee who has resigned, its maintenance is not a violation of Sec. 8(b)(1)(A). This fundamental premise is unproven on this record.

its allegations here by repeated out-of-context and inapposite references to cases in which the Board has stated that “an employee may communicate his resignation from membership in any feasible way and no particular form or method is required so long as he clearly indicates that he no longer wishes to remain a member.” It is this standard on which the General Counsel’s case rests—essentially advancing the unprecedented contention that the maintenance of *any rule* prescribing a method of resignation is unlawful.

But the cases upon which the General Counsel relies are plainly inapposite. They are cases—in every case—that involve allegations of 8(b)(1)(A) violations where the union has (1) acted against an employee to obstruct resignation and (2) where there is *no rule* prescribing the manner of resignation. In other words, the cases advancing the General Counsel’s proposition are not cases alleging an unlawful maintenance of a rule—they are cases where there is *no rule* and yet still the union refuses affirmatively to accept an employees’ proffered resignation and takes action against the member. Thus, the gravamen of the General Counsel’s argument rests on appeal to precedent that simply has nothing to say about what kind of rule a union can maintain (without evidence of application or enforcement) without running afoul of 8(b)(1)(A).

What is more, the standard which the General Counsel urges comes from cases that *expressly* limit the application of that standard to instances where there is no union rule governing resignations. Thus, the General Counsel cites *Electrical Workers IBEW (Houston Lighting & Power Co.)*, 280 NLRB 1362, 1363 (1986), a case where the union fined 10 employees who returned to work during a strike after telexing resignations to the union. The union did not accept the resignations. The administrative law judge, in reasoning adopted by the Board, made the statement, that “so long as the desire to resign is clearly communicated. . . . Such communication may be made in any feasible way and no particular form or method is required.” However, the judge specifically noted that there was no contention by the union “that the Union Constitution and By-Laws provided for an exclusive method of resignation.” 280 NLRB at 1363. This case found that the union violated 8(b)(1)(A) by fining the employees, but did not involve an allegation that the union unlawfully maintained a rule, indeed, there was no rule for the Board to consider.

Notably, the administrative law judge in *Houston Lighting & Power* based the proposition that a member could resign “in any feasible way” on citation to an earlier case, *IBEW Local Union No. 66 (Houston Lighting & Power)*, 262 NLRB 483 (1982). There, the Board held that the union violated Section 8(b)(1)(A) (and 8(b)(2)) when the union, after refusing to accept a member’s resignation and revocation of checkoff authorization, attempted to cause the employer to violate section 8(a)(3) by deducting dues from the employee’s pay.

In that case, the Board noted that “*it is well settled that where neither a union’s constitution nor bylaws provides specific restraints on resignation, a member may resign from the union at will so long as the desire to resign is clearly communicated*” (emphasis added). While the General Counsel cites and relies extensively (GC Br. at 4–5) upon *Local Union No. 66 (Houston Lighting and Power)*, he neglects to make reference

to the portion of the citation I have emphasized here, omitting it from his quotation to the case. Thus, for the unsupportable proposition that a union may not adopt a rule that prescribes any procedures for resignation, the General Counsel cites a case in which the Board expressly limited its view that an employee could resign in any manner to those cases where the union had not adopted a rule prescribing the manner of resignation. In short, these cases suggest the opposite of what the General Counsel relies upon them for, and, in any event, are inapposite because they do not involve an allegation of unlawful maintenance of a resignation rule.

The General Counsel also cites *Local 80 Sales, Service & Allied Workers' Union (Capitol-Husting Co., Inc.)*, 235 NLRB 1264, 1265 (1978), for a similar proposition. In *Capitol-Husting*, Board found that a union violated 8(b)(1)(A) by refusing the request of a member to resign (he had initiated a successful deauthorization drive) on grounds that the member was in arrears and not a member in good standing, and his dues continued to be checked off notwithstanding his request to the employer to revoke dues checkoff. The Board found the union's conduct violative of the Act, but in this case too, the Board couched an employee's right to resign in any manner he or she chooses as applicable to situations where there is no rule on resignations:

Where neither a union's constitution or bylaws provide specific restraints on resignation. . . a union member may resign at will . . . [and] may communicate his resignation from membership in any feasible way and no particular form or method is required.

Id. at 1265.

As in the other cases cited by the General Counsel, in this case too, the Board suggests—expressly—that the union's inability to impose procedures for resignation are a consequence of there being no union rule in effect. In any event, the case is inapposite because it has nothing to do with the allegedly unlawful maintenance of a rule restricting resignation, which is all that is at issue in the instant case.

The General Counsel also goes so far as to assert that “[t]he Board does not require resignations be in writing” (GC Br. at 4), a pronouncement that may be intended to suggest an answer to, but, in fact, does not treat with the question of whether a union violates the Act if it maintains a rule requiring that resignations be in writing. More to the point, none of the cases cited by the General Counsel on this point suggest, in any way, that the maintenance of a rule requiring that resignations be in writing is unlawful.

Thus, while the General Counsel cites (GC Br. at 4) *Communication Workers of America, AFL-CIO Local 1127 (New York Telephone Co.)*, 208 NLRB 258, 262–263 (1974), in that case the Board rejected the contention that a union could deem oral resignation ineffective *where the union had no requirement for written resignations*. 208 NLRB at 262–263:

Neither Respondent [local union] in its bylaws, not its parent [union] in its constitution, has any provision respecting resignation from membership [but] nevertheless contends that an oral resignation is ineffective Both in *NLRB v. Gran-*

ite State Joint Board, 409 U.S. 213 (1972); and *Machinists Lodge 405 v. NLRB, supra*, the Supreme Court rejected attempts by the unions involved therein to impose on their members restrictions on their right to resign which did not appear in their constitutions and bylaws, or which their members either had no knowledge of, or had not consented to.

The General Counsel also cites *Sheet Metal Workers Local 18 (Rohde Bros.)*, 298 NLRB 50, 52 (1990), for the proposition that written resignations may not be required. However, the General Counsel misreads the case. In *Rohde Bros.*, the Board *did not* find a maintenance violation on grounds that the union's rule required that resignations be in writing. To the contrary, in *Rohde Bros.* the General Counsel “conced[ed] that such provision is not ‘facially invalid.’” 298 NLRB at 53. Even more telling, the General Counsel in *Rohde Bros.* made this concession in a case where it argued successfully that *other* portions of the union's rule were invalid on their face and unlawful to maintain. Thus, the General Counsel argued, and the Board, appropriately found in *Rohde Bros.*, that it was unlawful for the union to maintain rules allowing only a member “in good standing who has paid all dues and financial obligations” to submit a resignation and that provided that “[n]o resignation shall be accepted if offered in anticipation of charges being preferred against him, during the pendency [sic] of any such charges or during a strike or lockout.” 298 NLRB 51–52. This is familiar grounds for finding a violation. See, *Sheet Metal Workers, Local 73 (Safe Air Inc.)*, *supra*. But it has nothing to do with the case at bar. Thus, in *Rohde Bros.* the General Counsel could have argued, and the Board could have found, that, as argued here, the written resignation requirement constituted grounds for finding a “maintenance violation.” However, to the contrary, the General Counsel in *Rohde Bros.* openly conceded it did not. *Rohde Bros.* is not precedent that supports the General Counsel's case here. At the least, it suggests the opposite of the General Counsel's argument.

In considering just how far afield the General Counsel in this case proposes to move the 8(b)(1)(A) bar, it is not insignificant to point out that the concurrence in *Victor Dalmo*—i.e., the concurrence articulating the view expressly adopted by the Board in *Neufeld*, which in turn, was the view approved by the Supreme Court in *Pattern Makers*'—rejected the view that requiring that resignations be in writing was invalid, much less unlawful, as the General Counsel proposes here. The concurrence in *Victor Dalmo*, opined that “[a]ny union rule that restricts a member's right to resign is unreasonable and any discipline taken by a union against an employee predicated on such a rule violates Section 8(b)(1)(A).” 263 NLRB at 992. At the same time, the concurrence went out of its way to clarify that procedural requirements such as those requiring a resignation to be in writing were appropriate. They were not, in the view of the concurrence, “‘restrictions’ on resignation” at all, but “[r]ather, they are simply ministerial acts necessary to ensure that a member's resignation is voluntary and has, in fact occurred.” 263 NLRB at 992–993 & fn. 52. See also, *UAW, Local 148 (Douglas Aircraft Co.)*, 296 NLRB 970 (1989) (agreeing that “the requirement that a member's resignation be in writing and sent to a designated officer of the local union

could not reasonably be construed as restraining or coercing members in the exercise of their Section 7 rights”); *Auto Workers, Local 449 v. NLRB*, 865 F.2d 791, 797 (6th Cir. 1989) (“Neither 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. On 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”); *Telephone Traffic Union Local 212 (New York Telephone Co.)*, 278 NLRB 998 (1986) (Board declines to reach issue of whether union’s “procedural requirements that resignation be submitted in writing to the secretary-treasurer by registered mail” were unlawful to maintain).

In short, none of the cases relied upon by the General Counsel condemns a rule prescribing a method for resignation of the type at issue here. As stated above, the policy at issue here does not, on its face, threaten, prohibit, or penalize members from resigning, or bar resignations at certain times, or render such resignations ineffective to avoid union sanction.

It would be a significant expansion of the scope of Section 8(b)(1)(A) to find a “maintenance” violation in these circumstances. But the General Counsel has offered no argument at all as to why I, or the Board, can or should expand union culpability in this manner. Indeed, by contending with such certainty that existing precedent warrants the result it seeks, the General Counsel has left itself without an argument as to why existing precedent should be expanded.

Again, at the risk repeating myself, I stress that I do not reach the issue—unalleged and unadvanced by the General Counsel—of whether the enforcement of the Union’s policy against an employee to deny resignation would survive the Board’s scrutiny. It may well not. But the mere maintenance of this policy does not violate the Act on its face, under existing Board precedent.⁸

2. The policy’s procedures for revoking dues authorization

The General Counsel argues separately in its brief (GC Br. at 6–7) that maintenance of the policy violates the Act because it

⁸ The Charging Party makes the same mistake, citing numerous cases *not* involving a facial challenge to union resignation procedure requirements. See, e.g., *Local 128, UAW (Hobart Corp.)*, 283 NLRB 1175, 1177 (1987) (union violated 8(b)(1)(A) by not refusing to accept an employee’s resignation and continuing to demand the employer deduct and remit dues, but the Board specifically found it unnecessary to “pass on the legality of the requirement that resignations be sent by registered mail.”); *Local 54, Hotel & Restaurant Employees (Atlantis Casino Hotel)*, 291 NLRB 989, 990 (1988) (finding 8(b)(1)(A) violation for union to refuse to accept as resignation requests to be financial core members from, and later invoking disciplinary procedures against, employees because they returned to work during strike; no rule on resignation, not a “maintenance” case), *enf’d*, 887 F.2d 28 (3d Cir. 1989); *Local 441, IUE (Phelps Dodge)*, 281 NLRB 1008, 1012 (1986) (union violated 8(b)(1)(A) and (2) by rejecting member’s resignation as untimely and subsequently attempting to have employer discharge; not a “maintenance” case); *Pattern & Model Makers Ass’n (Michigan Model Manufacturers Assn., Inc.)*, 310 NLRB 929 (1993) (Board ruled on effective date of mailed resignations for purpose of immunity from further union discipline; case did not concern maintenance of a union rule).

prescribes a process for revoking dues-checkoff authorization.

The problem with the General Counsel’s case is essentially the same as with resignation. There is no record evidence of application of the policy. Thus, the General Counsel contends that the Union’s policy on revocation is a facial “maintenance” violation. There is no precedent for the Board to find an 8(b)(1)(A) violation under the circumstances presented for exactly the same reasons as in resignation cases. Dues authorizations agreements are an internal union matter that do not implicate Section 8(b)(1)(A) unless contrary to an overriding policy contained in national labor law. The Board has found revocability terms lawful so long as they did not “constitute such an impediment to an employee’s freedom of revocation” as to effectively preclude them from revoking their dues assignments. See *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). Given that, the mere maintenance of this policy’s procedures for revocation cannot, on their face, violate Section 8(b)(1)(A).

Moreover, in comparison to resignation, the matter is complicated by the fact that it is relevant to the case law whether the procedures objected are at variance from the employee’s agreement for dues checkoff, a matter to which the record in this case does not speak. See, *Newport News Shipbuilding & Dry Dock Co.*, 253 NLRB 721 (1980) (finding an 8(b)(1)(A) violation against union for “Maintaining or enforcing a provision in a collective-bargaining agreement which requires that employees use a particular form in order to revoke their dues-checkoff authorizations or requiring employees to appear in person at the union hall in order to revoke their dues-checkoff authorizations, *where these restrictions on revocation were not set forth in the dues-checkoff authorizations signed by the employees*”) (emphasis added), *enf’d*, 663 F.2d 488 (4th Cir. 1981).

As with resignations, I stress that although I find no 8(b)(1)(A) violation under the circumstances presented, this does not mean that the Union’s policy is valid and enforceable against employees seeking to revoke their dues-checkoff authorizations. That issue is not presented by this case and I do not reach it.

I dismiss the complaint.

CONCLUSIONS OF LAW

The Respondent did not violate the Act as alleged in the complaint. On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended⁹

ORDER

The complaint is dismissed.

Dated, Washington, D.C. October 26, 2015

⁹ 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.

