

Nos. 15-1102

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

**KIMBERLY STEWART, KAREN MEDLEY, ELAINE BROWN, SHIRLEY JONES,
SALOOMEH HARDY, JANETTE FUENTES, and TOMMY FUENTES**

PETITIONERS

V.

NATIONAL LABOR RELATIONS BOARD

RESPONDENT

AND

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 99

INTERVENOR

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

**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: The Board is the respondent before the Court; its General Counsel was a party before the Board (Board Case Nos. 28-CA-22836, 28-CB-07045). Kimberly Stewart, Karen Medley, Elaine Brown, Shirley Jones, Saloomeh Hardy, Janette Fuentes, and Tommy Fuentes were the charging parties before the Board, and petitioners in this Court. The United Food and Commercial Workers, Local 99, and Fry Food & Drug Centers, Inc. d/b/a Fry’s Food Stores were respondents before the Board. UFCW, Local 99 is the intervenor before this Court.

B. Rulings Under Review: This case is before the Court on a petition filed by Kimberly Stewart, Karen Medley, Elaine Brown, Shirley Jones, Saloomeh Hardy, Janette Fuentes, and Tommy Fuentes for review of an order issued by the Board on March 20, 2015 and reported at 362 NLRB No. 136.

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

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this 21st day of September, 2015

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GLOSSARY

A.	Joint Appendix
Act	The National Labor Relations Act
ALJ	Administrative Law Judge of the National Labor Relations Board
Board	The National Labor Relations Board
Br.	Opening brief of Petitioners
Company	Smith's Food & Drug Centers, Inc. d/b/a Fry's Food Stores
LMRA	Labor Management Relations Act
NLRB	National Labor Relations Board
Petitioners	Kimberly Stewart, Karen Medley, Elaine Brown, Shirley Jones, Salomeh Hardy, Janette Fuentes, and Tommy Fuentes
Union	United Food and Commercial Workers Union Local 99

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**BRIEF FOR
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STATEMENT OF JURISDICTION

This case is before the Court on the petition of Kimberly Stewart, Karen Medley, Elaine Brown, Shirley Jones, Saloomah Hardy, Janette Fuentes, and Tommy Fuentes (collectively “Petitioners”) to review a Decision and Order of the

National Labor Relations Board (“the Board”) dismissing an unfair labor practice complaint against Smith’s Food & Drug Centers, Inc. d/b/a/ Fry’s Food Stores (“the Company”), and United Food and Commercial Workers Union, Local 99 (“the Union”). The Board’s Decision and Order, which issued on March 20, 2015, and is reported at 362 NLRB No. 36, is final with respect to all parties. (A. 313.)¹

The Board had subject matter jurisdiction under Section 10(a) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(a)) (“the Act”). The Court has jurisdiction over this proceeding pursuant to Section 10(f) of the Act (29 U.S.C. § 160 (f)). Petitioners timely filed their petition for review on June 8, 2015, because the Act places no time limitation on the filing of such petitions. The United Food & Commercial Workers Union, Local 99, has intervened on behalf of the Board.

STATEMENT OF THE ISSUE PRESENTED

Whether the Board reasonably dismissed the complaint allegations that the Union and the Company unlawfully continued to collect and remit union dues

¹ “A.” refers to the Appendix. References preceding a semicolon are to the Board’s findings; those following are to the supporting evidence.

from employees who had resigned from the Union but had not timely revoked their dues-checkoff authorizations.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are contained in the attached addendum.

STATEMENT OF THE CASE

Acting on unfair labor practice charges, the Board's General Counsel issued an amended complaint, alleging that the Company had violated Section 8(a)(1), (2), and (3) of the Act (29 U.S.C. § 158(a)(1), (2), and (3)) by continuing to deduct an amount equal to union dues from employees' wages after they resigned from the Union, and that the Union had violated Section 8(b)(1)(A) and (2) of the Act (29 U.S.C. § 158(b)(1)(A)) by continuing to accept that money. (A. 307-08; 16-48.)

After a hearing, an administrative law judge issued a decision and recommended order, dismissing the complaint allegations in their entirety. (A. 307-12.) The General Counsel and Petitioners filed exceptions to the judge's finding that neither the Company nor the Union had violated the Act. (A. 307.) On July 9, 2012, the Board (Chairman Pearce and Members Griffin and Block) issued its Decision and Order adopting the judge's dismissal of the complaint. (A. 307.) Petitioners petitioned this Court for review of the Board's 2012 Decision and Order. On January 25, 2013, after the Board filed the record in that case, No.

12-1338, the Court placed that case in abeyance pending the Supreme Court's review of *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), which raised questions concerning the validity of certain recess appointments to the Board.

On June 26, 2014, the Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), which held three recess appointments to the Board in January 2012 invalid under the Recess Appointments Clause, including the appointments of Members Griffin and Block. Subsequently, on the Board's motion, this Court vacated the Board's 2012 Decision and Order, and remanded the case to the Board for further proceedings. (A. 313.)

On March 20, 2015, the Board (Chairman Pearce and Members Hirozawa and McFerran) issued the Decision and Order (362 NLRB No. 36) that is now before the Court which dismissed the complaint in its entirety. (A. 313.)

I. THE BOARD'S FINDINGS OF FACT

A. **Background; Petitioners Sign Written Authorizations that Permit the Company to Deduct an Amount Equal to Union Dues from Their Wages and to Remit that Money to the Union Regardless of Whether They are Union Members**

The Company operates numerous grocery stores in Arizona. (A. 308; 33.) The Union has exclusively represented a unit of the Company's employees since 1993. (A. 34.) The Company and the Union were parties to a collective-bargaining agreement effective from October 26, 2003, to October 25, 2008. (A.

309; 35, 53-54, 219-20.) Because Arizona is a “right-to-work state” (A. 309), the parties could not require that unit employees become members of the Union as a condition of employment or pay any union dues, and accordingly no union-security clause was included in the parties’ agreement. (*See* Section 14(b) of the Act (29 U.S.C. § 164(b)).² The bargaining agreement, however, contained a union dues-checkoff provision that permitted employees to have the Company deduct an amount equivalent to the Union’s monthly dues from their wages and remit them to the Union. (A. 309; 35, 54.)

Each of the Petitioners signed a written dues-checkoff authorization (A. 309; 169-70, 179, 189, 200, 203, 252, 272, 276, 288-89),³ which stated:

This Check-Off Authorization and Agreement is separate and apart from the Membership Application and is attached to the Membership Application only for convenience.

CHECK-OFF AUTHORIZATION

To: Any Employer under contract with [the Union]

² Section 14 (b) permits states to prohibit “agreements requiring membership in a labor organization as a condition of employment” 29 U.S.C. § 164(b); *see v. Pence*, 767 F.3d 654, 659 (7th Cir. 2014).

³ Dates that Petitioners signed authorization agreements included Stewart on July 29, 2007, Medley on October 11, 1999, Brown on October 25, 1993, Jones on November 15, 2000, Hardy on October 6, 2004, J. Fuentes on June 16, 2008, and T. Fuentes on October 6, 2006. (A. 309; 169-70, 179, 189, 200, 203, 252, 272, 276, 288-89.)

You are hereby authorized and directed to deduct from my wages, commencing with the next payroll period, an amount equivalent to dues and Initiation fees as shall be certified by the [Union], and remit same to [the Union's] Secretary-Treasurer.

This authorization and assignment is voluntarily made in consideration for the cost of representation and collective bargaining and is not contingent upon my present or future membership in the Union. This authorization and assignment shall be irrevocable for a period of one (1) year from the date of execution or until the termination date of the agreement between the Employer and [the Union], whichever occurs sooner, and from year to year thereafter, unless not less than thirty (30) days and not more than forty-five (45) days prior to the end of any subsequent yearly period I give the Employer and Union written notice of revocation bearing my signature thereto.

* * *

(A. 309; 169, 300.)

On a weekly basis the Union transmitted to the Company a list of employees for whom it should deduct union dues. (A. 246-48.) The Company's payroll facility then remitted the authorized amounts to the Union. (A. 246-47.) Under its procedures, the Union would process an employee's request to revoke his or her dues-check authorization if the request were received within the window period of 30-45 days before the anniversary of the signing of the authorization, or if it were received within the window period of 30-45 days before the expiration of the bargaining agreement. (A. 211-13, 305-06.)

B. After Expiration of the Bargaining Agreement on October 25, 2008, the Parties Enter Into a Series of Agreement Extensions to October 31, 2009; Between September and November 2009, Employees Resign From the Union and Seek To Revoke Their Dues Authorizations; the Company Continues To Remit Dues to the Union; and on November 12, 2009, the Parties Enter Into a New Bargaining Agreement

On October 25, 2008, after the collective-bargaining agreement had expired, the Company and the Union entered into a series of written agreements to extend the terms of the expired bargaining agreement. The parties entered into each extension agreement prior to the expiration of the prior one, and the terms of the 2003 bargaining agreement thus continued without interruption until October 31, 2009. (A. 309-10; 35-36, 58-66.)

Between September 28 and October 6, 2009, all Petitioners, and some other employees, sent letters to the Union to resign from union membership, and asking the Union to revoke their dues authorizations. (A. 309-10; 36-42, 171, 192, 201, 204, 256.) In a reply letter to some, if not all Petitioners and other employees, the Union explained that it had accepted the requests “for withdrawal of membership,” but had not honored the requests to withdraw from their dues-checkoff authorizations because they were not timely received in the available window periods for revocation. The letters generally referenced the 15-day period prior to the anniversary of an employee’s execution of a dues check-off authorizations as when revocation would have been timely. (A. 87, 174, 181.)

No bargaining agreement existed between November 1 and 12, 2009.

During that period, the Company continued to process the Union's dues-checkoff requests as it did under the 2003 agreement and subsequent extensions. (A. 250.)

Also in early November, the Union stated that it would call a strike if a new bargaining agreement was not reached by November 11. (A. 257-62.)

Between approximately November 9 and 12, Petitioners sent letters to the Union stating:

Now that there is a contract 'hiatus' and there is no longer a collective bargaining agreement in effect between the [U]nion and [the Company], you must cease deducting any further union dues from my salary. In the absence of a collective bargaining agreement, there is a new 'window period' for revocation of dues deduction authorizations. I hereby revoke and rescind any dues deduction authorization I may have signed. . . .

(A. 310; 175, 182-83, 191, 205.)

In letters to some, if not all Petitioners, the Union again stated that the requests to revoke the dues-authorizations were untimely. The letters generally referenced the 15-day period prior to the anniversary of an employee's execution of a dues check-off authorizations as when revocation would have been timely.

(A. 310-11; 177, 198.) The Company continued to process Petitioners' dues-checkoffs. (A. 311; 36-42.)

On November 12, 2009, the Company and the Union agreed to the terms of a new bargaining agreement that would be effective from November 12, 2009, to

October 27, 2012. (A. 309-10; 36). That day, the parties also signed a side agreement extending the prior collective-bargaining agreement until the new agreement was either ratified or rejected by the union membership. (A. 58.)

B. THE BOARD'S CONCLUSION AND ORDER

On the basis of the foregoing facts, the Board (A. 313), in agreement with the administrative law judge, dismissed the complaint alleging that the Company had violated Section 8(a)(1), (2), and (3) of the Act (29 U.S.C. § 158(a)(1), (2), and (3)) by continuing to deduct an amount equal to union dues from employees' wages after they resigned from the Union and attempted to rescind their dues-checkoff authorizations, and that the Union had violated Section 8(b)(1)(A) and (2) of the Act (29 U.S.C. § 158(b)(1)(A)) by continuing to accept that money. (A. 307, 313.) The Board considered de novo the judge's decision and the record in light of the parties' briefs, as well as the now vacated Decision and Order reported at 358 NLRB No. 66. Agreeing with the rationale set forth therein, the Board incorporated it by reference. (A. 307-13.)

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’s] findings are unsupported by substantial evidence in the record considered as a whole, or 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). “Under this deferential standard of review, [the Court] will reverse the Board’s findings of fact ‘only when the record is so compelling that no reasonable factfinder could fail to find to the contrary.’” *Id.* (citation omitted). And the Court “will not ‘displace the Board’s choice between two fairly conflicting views, even though the Court would justifiably have made a different choice had the matter been before it *de novo*.” *Id.* (quoting *Universal Camera Corp v. NLRB*, 340 U.S. 474, 488 (1951)).

Similarly, because Congress gave the Board the “primary responsibility for developing and applying national labor policy,” a reviewing court should uphold the Board’s interpretation of the Act if it is “rational and consistent with the Act,” even if the reviewing court “would have formulated a different rule had [it] sat on the Board.” *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 786 (1990); accord *Brockton Hosp. v. NLRB*, 294 F.3d 100, 103 (D.C. Cir. 2002).

SUMMARY OF ARGUMENT

Section 302(c)(4) of the Labor Management Relations Act (29 U.S. C. § 186(c)(4)) permits employees to enter into voluntary agreements with their employer to have the employer deduct union dues from their wages and remit them to a union representing the employees. Employees who sign such a dues-checkoff authorization are bound by its terms including the window periods for revoking their authorization. Here, the Board reasonably dismissed the complaint allegations that the Union and the Company unlawfully continued to collect and remit union dues based on the complete lack of record evidence that any employee requested revocation during an available window period.

The Board applied the principles of *IBEW, Local 2088 (Lockheed Space Operations Co.)*, 302 NLRB 322, 325, 328-39 (1991), to reject Petitioners' argument that employee resignations from the Union were the "functional equivalent" of having revoked dues-checkoff authorizations. In *Lockheed*, the Board held that where, as here, there is no union-security clause requiring union membership, parties can still enforce dues-checkoff authorizations after employees resign from a union, but only if, as here, the authorization contains explicit language clearly and unmistakably separating payment of union dues from union membership. Here, Petitioners do not dispute that the authorization agreement contained such explicit language, nor do they challenge the principles of

Lockheed. Accordingly, the Board reasonably concluded that its *Lockheed* decision precluded Petitioners' argument that resignation from the Union was the equivalent of revocation of dues authorization.

Similarly based on settled principles and the record evidence in this case, the Board rejected Petitioners' argument that employees were free to revoke their dues authorization in the period after the 2003 bargaining agreement expired but was in effect on a series of extensions, or during a short hiatus between bargaining agreements in early November 2009. First, the Board reasonably found that the contract extensions did not create new window revocation periods for employees to revoke their authorizations. That conclusion is consistent with the precedent of *Atlanta Printing Specialties*, 215 NLRB 237 (1974), *enforced*, 523 F.2d 783 (5th Cir. 1975), and the legislative history of Section 302(c)(4). Second, the Board, relying on its precedent in *Frito-Lay, Inc.*, 243 NLRB 137, 144 (1979), reasonably rejected Petitioners' assertion that employees could withdraw their dues-checkoff authorizations at will during the early November contract hiatus.

ARGUMENT

THE BOARD REASONABLY DISMISSED THE COMPLAINT ALLEGATIONS THAT THE UNION AND THE COMPANY UNLAWFULLY CONTINUED TO COLLECT AND REMIT UNION DUES FROM EMPLOYEES WHO HAD RESIGNED FROM THE UNION BUT HAD NOT TIMELY REVOKED THEIR DUES-CHECKOFF AUTHORIZATIONS

A. Applicable Principles

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. Specifically, Section 302(c)(4) permits an employer to deduct union dues from employees' wages and remit those moneys to their exclusive collective-bargaining representative, "*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). Accordingly, the Board and the courts have 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).

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 IBEW, Local 2088 (Lockheed Space Operations Co.)*, 302 NLRB 322, 325, 328-39 (1991) ("*Lockheed*"). A dues-checkoff authorization must be voluntary, as it is unlawful to compel employees to execute an authorization even where a contract contains a valid union–security provision. *See Int'l Union of Elevator Constructors Local Union No. 8 v. NLRB*, 665 F.2d 376, 378-79 & n.3 (D.C. Cir. 1981). Such authorizations are also lawful in a “right-to-work” state, 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 employment” 29 U.S.C. § 164(b). *See Syscon Int'l, Inc.* 322 NLRB 539, 539 n.1 (1996). That is true because “dues and remaining a union member can be two distinct actions.” *Lockheed*, 302 NLRB at 325.

Against that background, the Board regards checkoff authorizations as “a contract” between employees and their employers (*Lockheed*, 302 NLRB at 327), and applies, with court approval, general contract principles in cases involving such authorization. For example, dues-checkoff authorizations must clearly state restrictions on revocation; in turn, employees must abide by those restrictions in

order to effectively revoke their checkoffs. *UFCW Local One*, 975 F.2d at 44; *Capital-Husting*, 235 NLRB at 1265. And an employee who signs a dues-checkoff authorization is bound by its terms, including the revocation limitations specifically expressed in the authorization itself. *See Schweitzer Aircraft Corp.*, 320 NLRB 528, 531 (1995), *affirmed sub nom. Williams v. NLRB*, 105 F.3d 787, 792 (2d Cir. 1996); *UFCW Local One, AFL-CIO v. NLRB*, 975 F.2d 40, 44 (2d Cir. 1992); *Capital-Husting, Inc.* 235 NLRB 1264, 1265 (1978).

If a union causes an employer to deduct union dues from employees' wages without valid dues-checkoff authorizations, the union violates Section 8(b)(1)(A) and (2) of the Act, because it restrains and coerces employees in the exercise of their right under Section 7 of the Act (29 U.S.C. § 157)⁴ to refrain from assisting a labor organization. *See NLRB v. Bhd. of Railway, Airline Steamship Clerks*, 498 F.2d 1105, 1106, 1109 (5th Cir. 1974). Similarly, an employer violates Section 8(a)(1), (2), (3) of the Act, if it deducts dues from employees' wages without valid

⁴ Section 7 of the Act guarantees employees “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” 29 U.S.C. § 157.

dues-checkoff authorizations. *See id.* at 1109; *NLRB v. Penn Cork & Closures, Inc.*, 376 F.2d 52, 54 (2d Cir. 1967).

Since dues-checkoff systems developed in part as way to minimize administrative burdens 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 widespread disruptive effect on existing dues-checkoff arrangements or place undue burdens on unions and employers. *See UFCW Local One*, 975 F.2d at 44; *NLRB v. Atlanta Printing Specialties & Paper Products Union 527*, 523 F.2d 783, 786 (5th Cir. 1975). Although the Board is not responsible for enforcing Section 302, “neither does the statute bar the Board, in the course of determining whether an unfair labor practice has occurred, from considering arguments concerning Section 302 to the extent they support, or raise a defense to, unfair labor practice allegations.” *BASF Wyandotte Corp.*, 274 NLRB 978, 978 (1985), *enforced*, 798 F.2d 849 (5th Cir. 1986); *accord NLRB v. Oklahoma Fixture Co.*, 332 F.3d 1284, 1287 (10th Cir. 2003) (the Board’s interpretation of Section 302 as it affects labor law issues is entitled to “some deference,” provided that the Board’s interpretation is “reasonable or permissible” and “not in conflict with interpretive norms regarding criminal statutes”).

B. The Board Reasonably Dismissed the Complaint Allegations

Petitioners do not dispute the facial validity of the Union’s dues-checkoff authorization, nor do they dispute that it is a standard agreement. (A. 307 n.3.) That authorization, on its express terms, was “irrevocable” for one year “from the date of execution or until the termination date of the [bargaining] agreement . . . , whichever occurs sooner, and from year to year thereafter, unless not less than thirty (30) days and not more than forty-five (45) days prior to the end of any subsequent yearly period” an employee gave written notice of revocation to the Union and the Company. (A. 309; 169, 300.) Here, as the Board found, and Petitioners do not dispute, there is no record evidence that any of the employees, including Petitioners, “attempted to revoke—or even inquired about revoking—their authorizations during any of the possible window periods.” (A. 307 n.3.) In other words, the record in this case contains no evidence that any employee sought to revoke his or her dues-checkoff authorization during a window period applicable to either the anniversary date of signing their authorizations or the expiration of the bargaining agreement. Accordingly, the Board found that the General Counsel had not proved his case.

Further, as shown below, absent record evidence of timely revocations, the Board (A. 309-12) reasonably rejected the arguments that resignations from the Union could serve as “functional equivalents” of timely revocations, or that

employees were free to revoke their dues-checkoff authorizations at will during the contract extensions or the short contract hiatus.

- 1. The resignations from union membership were not the functional equivalent of revocations of the dues-checkoff authorizations**
 - a. The Board reasonably found no merit to the General Counsel's argument**

The Board (A. 308-10) reasonably rejected the argument that Petitioners' resignations from the Union were the functional equivalent of dues-checkoff revocations. In reaching that determination where, as here, no union-security clause requires union membership, the Board first "determine[d] whether [their] checkoff authorizations were contingent upon continued union membership." (A. 310.) That approach is fully consistent with longstanding principles the Board set forth in *Lockheed* that paying "dues and remaining a union member can be two distinct actions." *Lockheed*, 302 NLRB at 325, 328.

As the Board explained here (A. 310), quoting *Lockheed*, its "review of statutory policies, [including Section 302(c)(4),] and contractual principles persuade[d] [it] that there is no reasonable basis for precluding an employee from individually agreeing that he will pay dues to a union whether or not he is a member of it and that he will pay such dues through a partial assignment of his wages, i.e., a checkoff. Neither is there a reasonable basis for precluding enforcement of such a voluntary agreement." 302 NLRB at 328. The Board

requires, however, that such dues authorizations contain “[e]xplicit language” that “clearly set[] forth an obligation to pay dues even in the absence of union membership.” 302 NLRB at 329; *see also Allied Production Workers Union Local 12*, 337 NLRB 16, 18-19 (2001); *Auto Workers Local 788*, 302 NLRB 431, 432 (1991); *Williams*, 105 F.3d at 791-92 (discussing *Lockheed*).

Here, the Board reasonably found that “[e]mployees voluntarily signed authorizations that were clearly *not* linked to union membership.” (A. 308, with origin emphasis.) Indeed, the authorizations explicitly stated that they were “voluntarily made in consideration for the cost of representation and collective bargaining and [were] not contingent upon [the employees’] present or future membership in the Union.” (A. 309; 169, 300.) Therefore, the Board, relying on the precedent of *Lockheed*, reasonably concluded that “resignation[s] from union membership did not relieve those employees of their obligations under the checkoff authorizations to continue to make payments to the Union.” (A. 310.)

The Board’s conclusion here is also fully consistent with prior Board cases that applied *Lockheed* to hold that employees’ resignations from a union did not relieve them from continuing to have their union dues deducted through a dues-checkoff authorization based on the authorization’s explicit language separating union dues from membership. *See AT&T Co.*, 303 NLRB 944, 945 (1999) (language in authorization agreement that it was not “conditioned” on “present or

future” union membership); *USW, Local 4671 (National Oil Well, Inc.)*, 302 NLRB 367, 367 n.2, 368 (1991) (language in authorization agreement that dues obligation existed “irrespective” of the status of union membership); *see also American Nurses’ Ass’n*, 250 NLRB 1324, 1324 n.1, 1331-32 (1980) (“resignation from the [u]nion does not constitute revocation of dues checkoff authorizations”).

Having reasonably found that employees who signed dues-checkoff authorizations had a dues obligation separate from their union membership, the Board proceeded to reasonably find (A. 308-10) that its decision in *Lockheed* “foreclosed” the General Counsel’s argument that resignations from the Union served as a “functional equivalent” of dues-checkoff revocations.⁵ As the Board explained, *Lockheed* “allows for the possibility that an employee may no longer wish to remain a member of a union but nonetheless desire[] to contribute to a union for contract administration expenses via a checkoff authorization,” and the General Counsel “does not explain how th[at] holding can be reconciled with his theory that the Union should have understood that resignations also meant the employee was also announcing a desire to revoke the checkoff authorization.” (A. 310.) Accordingly, the Board concluded that there was no basis for the allegations

⁵ For example, the General Counsel argued that when petitioner Hardy resigned her union membership on September 29, 2009, her resignation put the Union on

that the Company and the Union acted unlawfully by continuing dues-checkoff for those employees who resigned from union membership but who had not timely revoked their checkoff authorizations.

b. Petitioners' arguments are without merit

In their opening brief, Petitioners did not assert that the Board wrongly decided *Lockheed*, nor did they dispute that they signed dues-checkoff authorizations that clearly and unmistakably committed them to continue financial support for the Union regardless of membership status. Instead, Petitioners continue to claim (Br. 24, 29), as did the General Counsel before the Board, that resignations from union membership are the “functional equivalent” of revocations of checkoff authorizations. Simply put, as shown above, the Board’s decision in *Lockheed* forecloses the “functional equivalent” argument, where, as here, the dues-checkoff authorizations are separate from union membership. Moreover, because of that separation, Petitioners’ claim (Br. 27, 29) that the resignations should have been recognized as a request to end dues checkoff during the next available window period is unavailing.⁶

notice to stop her dues authorization on October 6, 2009, the anniversary date of her execution of a dues-checkoff authorization. (A. 309.)

⁶ Petitioners’ provide no specific basis for claiming (Br. 27, 29) that *Lockheed* itself requires that after resignations from the Union the dues-authorizations terminate at the next revocation period. In the cited pages, the Board in *Lockheed*

Contrary to Petitioners' suggestion (Br. 24-25), the Board in *Lockheed* did not assume that employees who resign from a union still want to pay dues. Rather, the Board simply recognized in *Lockheed*, as shown at above pp. 18-19, that the Act and Section 302(c)(4) did not preclude employees from entering into an agreement that separated union membership from the collection of union dues. And the Board in *Lockheed* proceeded to set forth a limited circumstance where, absent timely revocation of dues authorizations, the authorizations continued independent of union membership. As explained in *Lockheed*, "dues may properly continue to be deducted from the employee's earnings and turned over to the union during the entire agreed-upon period of irrevocability, even if the employee states he or she has a change in heart and wants to revoke the authorization." 302 NLRB at 328-29. Otherwise, as the Board noted here (A. 310), the requirement that employees timely revoke their dues authorizations during an agreed-upon window period would become irrelevant upon resignation, and permit employees to achieve through resignations what they could not achieve through untimely revocations.

stated that dues continue during the period of irrevocability even after resignation from a union. *Id.* at 328-29. That reference simply reiterates *Lockheed's* holding that a union may enforce a voluntary agreement to pay union dues dependent on its terms. And here, the authorization contained an automatic renewal provision absent revocation during certain window periods.

Contrary to Petitioners' suggestion (Br. 12, 25-26), the Board's application of *Lockheed* here, to find that employees who resigned from the Union had an ongoing obligation to pay union dues, is also consistent with the labor policy underpinnings of Section 7 of the Act, which guarantees employees the right to refrain from union activity. As recognized in *Lockheed*, "[t]he policy [of voluntary unionism] warrants the application of a test that will assure that the extraction of moneys from [the employees'] wages to assist a union, if not authorized by a lawful union security clause, is in accord with [the employees'] voluntary agreement." 302 NLRB at 328. Accordingly, the Board's holding in *Lockheed* protects such rights by requiring explicit language, and the Board based its holding on the principle that a contractual waiver of a statutory right must be "clear and unmistakable." *Id.* at 327 & n.18; see *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 709 (1983); see generally *SeaPak v. Indus., Technical and Prof'l Employees*, 300 F.Supp 1197, 1201 (S.D. Ga. 1969) (dues checkoff authorizations that are irrevocable for one year after signing do not constitute compulsory unionism from employees who seek to withdraw from membership within one year), *affirmed*, 423 F.2d 1229 (5th Cir. 1970), *affirmed*, 400 U.S. 985 (1971).⁷

⁷ The Supreme Court's decision in *Knox v. SEIU, Local 1000*, 132 S. Ct 2277 (2012), does not, as Petitioners' suggest (Br. 24-25), undermine the Board's

Nor is it hardly unreasonable, as Petitioners suggest (Br. 24-25), that employees might resign from the Union for personal reasons but, still support it. For example, a union may fine union members for crossing a picket line (*NLRB v. Allis-Chalmers Mfg.*, 388 U.S. 175, 195 (1967)), but may not fine former members who have lawfully resigned their union membership (*NLRB v. Textile Workers of America, Local 1029*, 409 U.S. 213, 217 (1972)). Therefore, employees might decide to resign from membership to avoid such fines, where, as here, a strike was a distinct possibility, and that or any other personal economic reason for resigning from a union does not necessarily correlate to a lack of support.

2. Employees were not free to revoke their dues authorizations after the bargaining agreement expired but its effect continued by extension, or during the hiatus before the new bargaining agreement took effect

a. The Board reasonably found no merit to the General Counsel's arguments

The Board (A. 310-11) reasonably rejected the General Counsel's arguments that employees had the right to revoke their authorizations at will from

finding that resignations from the Union are not the functional equivalent of dues-checkoff revocations. In *Knox*, public sector employees in California had an "agency shop" that required non-members to pay an annual fee for costs associated with collective bargaining, but permitted them to "opt out" of expenses for political or ideological purposes. *Id.* at 2285-86. The Court held that the union failed to give employees proper notice regarding a special assessment, and that an "opt out" rather than an "opt in" system violated their First Amendment rights. *Id.*

the expiration of the October 25, 2008 bargaining agreement to November 12, 2009, when the parties reached a new agreement, a period that encompassed both the bargaining agreement extensions, and a short period when no agreement existed.

First, the Board reasonably rejected the claim (A. 311) that each of the bargaining agreement extensions in the series effectively constituted a separate bargaining agreement which made it impossible to determine the applicable window period to revoke dues checkoff authorizations. That argument “is meritless because it is premised on the notion that employees are entitled to revoke their checkoff authorizations during the window periods preceding the termination of the extension agreements.” (A. 311.) Rather, relying on *Atlanta Printing Specialties*, 215 NLRB 237 (1974), *enforced*, 523 F.2d 783 (5th Cir. 1975), the Board reasonably found that the applicable collective-bargaining agreement for purposes of determining revocability remained the agreement in effect at the time of the extension in order to provide a “date-certain for revocations of checkoff authorizations” (A. 311), a window period that no employee met here.

In *Atlanta Printing*, the employees had a 15-day window period to revoke their authorizations based on expiration of the bargaining agreement. 215 NLRB

at 2288-96. This case does not does not involve any of the concerns or issues present in that case.

at 237. Before the agreement expired, the parties negotiated a new agreement and employees tried to revoke their authorizations based on the window period applicable to the prior agreement. The Board rejected the union's claim that employees could only revoke based on a window period tied to expiration of the *new* agreement, explaining that the "parties must preserve the statutory right of the employees to revoke their checkoff authorizations during the previously established escape period occurring before the originally intended expiration date of the old contract." *Id.* at 238. Here, as in *Atlanta Printing*, the applicable window period remained the period tied to the expiration of the 2008 agreement, and not any subsequent contract extension. And again, Petitioners do not dispute that, on this record, there is no evidence that any employee attempted to revoke during that time period.

Further, the Board's reasonable conclusion avoids the confusion that would result from determining fluctuating changes to window periods that would affect employee rights, and instead maintains identified, fixed periods clear to all parties.

(A. 311.) The Board's holding also avoids an outcome that would have widespread disruptive effect on existing dues checkoff arrangements or place undue burdens on unions and employers. *See Associated Builders & Contractors v. Carpenters Vacation & Holiday Trust Fund*, 700 F.2d 1269, 1277 (9th Cir. 1983) ("The dues- checkoff procedure of [S]ection 302(c)(4) is designed to ensure

not only the protection of the employee, but also the administrative convenience in the collection of dues.”).

The Board’s conclusion is also consistent with the legislative history of Section 302(c)(4), as recounted in *Monroe Lodge No. 770 Int’l Ass’n of Machinists & Aerospace Workers, AFL-CIO v. Litton Business Systems*, 334 F. Supp 310 (W.D. Va. 1971), *remanded on other grounds*, 1972 WL 3025 (4th Cir. 1972). As the court explained, the House bill would have permitted employees to revoke authorizations at any time with 30-days notice. The amended Senate bill, which was enacted, did not provide such multiple opportunities because “[i]t was thought that a period of one year would better protect the union’s position from deterioration through revocation of check-off authorizations.” *Id.* at 314.

Second, the Board reasonably found that its earlier decision in *Frito-Lay, Inc.*, 243 NLRB 137, 144 (1979) foreclosed the General Counsel’s assertion that employees could withdraw their dues-checkoff authorizations at will during the contract hiatus in early November 2009. Indeed, in *Frito-Lay* the Board rejected the same contention, holding that “employees [do not] have the right to revoke their checkoff authorizations whenever no collective-bargaining agreement is in effect regardless of the specific provisions in their authorizations limiting revocability.” *Id.* at 137, 138.

In *Frito-Lay*, some employees attempted, as here, to revoke their dues

authorizations during a hiatus between two bargaining agreements. The Board found that “the [u]nion and the [e]mployer were justified in considering the authorizations still valid,” because “the employees did not revoke their authorizations during either of the[] escape periods.” *Id.* at 139. Those window periods included one prior to the anniversary date of signing the authorization, and a second one prior to the expiration of the bargaining agreement. *Id.* In those circumstances, the Board found “no good reason to hold unlawful [the] [u]nion’s request (or the [e]mployer’s acquiesce in that request) that the [e]mployer continue to deduct dues pursuant to such outstanding checkoff authorizations.” *Id.*

Here, as in *Frito-Lay*, employees voluntarily entered into dues-checkoff authorizations that made the authorizations irrevocable for a defined period. And, as in *Frito-Lay*, the Board reasonably found here that employees did not have “the right to revoke their checkoff authorizations during time periods that are *not* specified in the authorizations that they had signed.” (A. 310-11, original emphasis). *See also American Nurses’ Ass’n.*, 250 NLRB 1324, 1331 (1980) (applying *Frito-Lay* to hold that employees could not revoke their dues authorizations during the interim between bargaining agreements absent evidence of an intent by the parties to provide an escape period during that time); *Steelworkers, Local 7405 (Asarco)*, 246 NLRB 878, 882 (1979) (a dues revocation must “be accomplished during the time period set out in the checkoff authorization

itself, even during the hiatus between contracts”). Therefore, the Board reasonably concluded here that “employees were not entitled to withdraw at will during the hiatus period between the contracts.” (A. 311.)

Third, the Board (A. 311) reasonably rejected the General Counsel’s reliance on letters sent by the Union in response to those who resigned from the Union or who sought to revoke their dues authorizations as justifying the right to revoke at will after the contract expired, and in particular during the hiatus. According to the General Counsel, the letters failed to properly inform employees of their rights by mentioning only a right to revoke in connection with the anniversary date of signing dues-checkoff authorizations, without also mentioning any right tied to contract expiration. As the Board explained, however, although the letters did not reference revocation based on contract expiration, the time had already passed to timely revoke based on the 2003 agreement and no new agreement “had been reached so there were no dates to provide.” (A. 311.)

Moreover, the Board reasonably found the letters irrelevant to its decision because the complaint did not “allege that the letters themselves contained any unlawful statements or breached the [U]nion[‘s] fiduciary duty.” (A. 311.) And regardless of what the letters said, “they were sent *after* and in reply to the resignations and attempted revocations and therefore could not have caused any

confusion among employees concerning their *earlier* attempts to revoke authorizations.” (A. 311, original emphasis.)

b. Petitioners’ arguments are without merit

Before this Court, Petitioners (Br. 18 n.5) concede that the “validity *per se* of 15 day window periods” to revoke authorizations “is not directly at issue in this case.” Nor do Petitioners claim that the dues-checkoff authorizations contained any explicit or implicit window period for dues revocation during a bargaining agreement hiatus. Instead, Petitioners assert (Br. 11-12, 15-20) that the Board improperly interpreted Section 302(c)(4) to limit employees to a single revocation period dependent on when they signed their authorizations. Petitioners further argue (Br. 11, 22-23) that the Board wrongly decided *Frito-Lay*, and that employees should have the right to revoke their authorizations at will during a contract hiatus. As shown below, these arguments are without merit.

As an initial matter, to the extent Petitioners’ suggest (Br. 17-23) that conduct that violates Section 302(c)(4) of the Act is an unfair labor practice, that suggestion, as the Board explained in *Frito-Lay*, is contrary to well settled law. 243 NLRB at 138 (citing cases). Rather, as shown above at p. 18, although the Board is not responsible for enforcing Section 302, it can consider arguments relating to Section 302 when determining whether an unfair labor practice occurred, and that where, as here, that finding is reasonable, it is owed deference.

Petitioners' claim (Br. 15-20) that the Board improperly interpreted Section 302(c)(4) as limiting employees to a single revocation period is immaterial to this case. Petitioners apparently base their claim on the administrative law judge's statement that all employees who signed authorizations during the term of the bargaining agreement could revoke their authorizations "during the window periods preceding the yearly anniversary date" of signing the authorizations, and that "employees who signed authorizations during the last year of the contract could revoke their authorizations upon the expiration of that contract." (A. 309). Here, however, regardless of whether a reasonable interpretation of Section 302(c)(4) provided all employees with two window periods regardless of when they signed an authorization agreement, Petitioners do not dispute that there is no record evidence that any employee, in fact, attempted to revoke their authorizations during a window period based on having signed an authorization, or a window period based on expiration of the bargaining agreement.⁸

⁸ The administrative law judge's statement closely mirrors the plain language of Section 302(c)(4) that suggests a single escape period based on either the anniversary date of signing an authorization, or the expiration of the bargaining agreement when employees sign an authorization during the last year of the agreement. The Board has generally interpreted Section 302(c)(4) as giving employees the right to revoke their authorizations at least once a year, and upon expiration of a bargaining agreement. *See Atlanta Printing Specialties*, 215 NLRB at 237 (1974), *enforced*, 523 F.2d 783 (6th Cir. 1975). The Board, however, has had no occasion to pass on whether a revocation period at the expiration of a

The Board in *Frito-Lay* also reasonably found, contrary to Petitioners' contention (Br. 15-20), that to the extent Section 302(c)(4) was relevant when evaluating checkoff authorizations, there was "no support" for the assertion that Section 302(c)(4) "renders all checkoff authorizations, regardless of their terms, revocable at will in the absence of a collective-bargaining agreement." 243 NLRB at 138. As the Board explained in *Frito-Lay*, Section 302 sets forth restrictions on payment of money from an employer to a union to address labor racketeering, but through Section 302(c)(4) explicitly "exempt[ed] from proscription certain types of payments which further legitimate ends" such as "payments deducted from employees' wages in the form of union dues." *Id.*

In context, the language in Section 302(c)(4) that authorizations "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," simply shows, as the Board reasonably explained, that "Congress sought to insure that such authorizations could be revoked at least once a year and at the termination of any 'applicable collective agreement'[,]" but that it did not prohibit the use of escape periods prior to those periods. 243 NLRB at 138 (quoting 29 U.S.C. § 186). To the contrary, the Board noted that Section 302(c)(4) has been construed as

bargaining agreement can be limited to those who sign authorizations during the last year of a bargaining agreement.

permitting such escape periods. *Id.* (citing *Amalgamated Meat Cutters and Allied Workers of North America, Local 593 v. Shen-Mar Food Products Inc.*, 405 F.Supp 1122, 1123-25 (W.D. Va., 1975) (employer required to continue to collect dues when employee sought to revoke his dues authorization outside of the two times that he could revoke the authorization, a window period at the anniversary of signing the authorization, and a window period prior to a new bargaining agreement); Department of Justice Opinion on Checkoff, 22 LRRM 46 (May 13, 1948) (stating opinion that authorization that set window periods of irrevocability connected to signing date and subsequent bargaining agreements did not violate Section 302(c)(4) or warrant prosecution “[e]ven with the automatic renewal provision . . .” because the authorization “does not appear to be ‘irrevocable’ for a period of more than one year”)).

Accordingly, the Board reasonably concluded in *Frito-Lay* that parties do not violate “Section 302(c)(4) if checkoff authorizations are irrevocable for stated periods and automatically renewed for like periods, as long as employees are accorded an opportunity to revoke their authorizations *at least* once a year and at the termination any collective-bargaining agreements,” and that “the limiting of the opportunity to revoke to a reasonable escape period . . . before the expiration

of either of these periods, does not require a different result.” 243 NLRB at 138 (original emphasis).⁹

Petitioners’ argument that dues authorizations are revocable at will absent a bargaining agreement is further undermined by the Court’s recognition that “Section 302 does not require a written collective bargaining agreement for dues checkoff to be lawful.” *Tribune Publishing Co. v. NLRB*, 564 F.3d 1330, 1355 (D.C. Cir. 2005). Rather Section 302(c)(4) “requires merely that employees give written consent that is revocable after a year.” *Id.*; see also *Local Joint Exec. Bd. of Las Vegas v. NLRB*, 657 F.3d 865, 875 (the Act does not limit the duration of dues-checkoffs to the duration of a bargaining agreement). Consistent with that view, the Court has previously affirmed a Board decision with a fact pattern similar to the present case. There, the Court affirmed an arbitrator’s award that an employer improperly processed employees’ dues revocations when no bargaining agreement existed and when the revocations were not made during the window periods specified in the authorizations. *Associated Press v. NLRB*, 492 F.2d 662, 664-68 (D.C. Cir. 1974). Although the Court declined to interpret Section 302(c)(4), the Court concluded that “the arbitrator’s reasonable interpretation was

⁹ Petitioners seem to suggest that the window period of 30-45 days before the contract expiration that is specified in the dues-checkoff authorization in this case is improper. That suggestion, however, is beside the point given Petitioners’

not inconsistent with either the fundamental purposes or the specific provisions of the [Act] which it is the duty of the Board to implement.” 492 F.2d at 667.

Contrary to Petitioners’ contention (Br. 11, 13, 20-22), *Atlanta Printing Specialties*, 215 NLRB 237 (1974), *enforced*, 523 F.2d 783 (5th Cir. 1975), and *WKYC-TV, Inc.*, 359 NLRB No. 30, 2012 WL 6800777 (2012), are not inconsistent with the Board’s finding here. As shown above, in *Atlanta Printing* the union effectively precluded employees from revoking their authorizations at the conclusion of a bargaining agreement, despite the authorizations providing a specific window period related to its expiration. Here, no evidence establishes that the Union would not have permitted employees to revoke their authorizations if made during the window period tied to contract termination. In *WKYC*, the Board addressed an employer’s right to stop collecting union dues once an agreement expired. In passing, the Board commented that employees can revoke authorizations “at will” upon the expiration of an agreement, but the Board did not call into question any of its prior cases regarding window periods, and the inability of employees to revoke their authorizations simply because a contract hiatus exists. 359 NLRB at slip op. 1, 7, 2012 WL *1-2, 9.

acknowledgement that the validity of authorization’s window periods is not at issue in this case.

Finally, in determining that an unfair labor practice did not occur under the Act, the Board was not required to follow the Court of Appeals of Tennessee's decision in *Murtha v. Pet Dairy Products Co.*, 314 S.W. 2d 185 (1958), where the court held, under state law, that an employer was not liable for treble damages because it did not breach a bargaining agreement clause by stopping the collection of some union dues.¹⁰ (See Br. 16-17.) Nor would *Anheuser-Bush, Inc. v. Int'l Brotherhood of Teamsters, Local 822*, 584 F.2d 41 (4th Cir. 1978), upon which Petitioners also rely (Br. 3, 11, 13, 17, 19, 21, 23), mandate a different result. There, where the Court affirmed a declaratory judgment that an employer's refusal to deduct dues from wages of employees during a four-month contract hiatus was legal, the dues-checkoff authorization specified that it would "automatically renew itself for successive yearly or applicable contract periods," but subsequently the contract was "terminated without renewal" and a three-month strike ensued. *Id.* at

¹⁰ Petitioners reliance on *Monroe Lodge 770*, 334 F. Supp 310 (citing *Felter v. Southern Pacific Co.*, 359 U.S. 326 (1959)), to suggest that untimely revocations should automatically become effective at the next window opening (Br. 18 n.5, 28 n.9), is waived as it was never raised to the Board. See Section 10(e) of the Act 29 U.S.C. § 160(e) ("[n]o objection that has not been urged before the Board ... shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances"); *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665 (1982); *Spectrum Health-Kent Cmty. Campus v. NLRB*, 647 F.3d 341, 348 (D.C. Cir. 2011).

42. Moreover, the case issued prior to the Boards' decision in *Frito-Lay*, and the Board's reasoning in that case, as applied here, is determinative.

Finally, Petitioners offer the hyperbolic suggestion (Br. 25-26) that the Union engaged in a scheme to "pad" its "coffers" because the Union's dues-checkoff authorization form contained "convoluted and confusing" language. As shown above, the facial validity of the authorization clause was not argued before the Board (A. 307 n.2), nor is it properly before the Court. Nor do Petitioners dispute that the Union used a standard authorization form. (A. 307 n.2.) In any event, Petitioners "failed to show that any ambiguity that employees might perceive resulted from misleading acts of the Union rather [than] ambiguity inherent in the statutory language and the judicial gloss placed on that language." (A. 311.)

In sum, the Board reasonably dismissed the complaint in its entirety.

CONCLUSION

The Board respectfully requests that the Court enter a judgment denying
Petitioners' petition for review.

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NATIONAL LABOR RELATIONS BOARD

September 2015

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

KIMBERLY STEWART, KAREN MEDLEY, ELAINE)	
BROWN, SHIRLEY JONES, SALOOMEH HARDY,)	
JANETTE FUENTES, and TOMMY FUENTES)	
)	
Petitioners)	No. 15-1102
)	
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	28-CA-22836
)	
Respondent)	
)	
and)	
)	
UNITED FOOD & COMMERCIAL)	
WORKERS UNION, LOCAL 99)	
)	
Intervenor)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 8,372 words of proportionally-spaced, 14-point type and the word processing system used was Microsoft Word 2010.

s/Linda Dreeben
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Dated at Washington, DC
this 21st day of September, 2015

ADDENDUM OF STATUTES, RULES, AND REGULATIONS

Relevant provisions of the National Labor Relations Act (29 U.S.C. § 151, et seq.) are as follows:

Sec. 7. [29 U.S.C. § 157]

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 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).

Sec. 8. [29 U.S.C. § 158]

(a) Unfair labor practices by employer. It shall be an unfair labor practice for an employer--

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title];

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 [section 156 of this title], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

(b) Unfair labor practices by labor organization. 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 [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 acquisition or retention of membership therein; or (B) an employer in the selection

of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of subsection (a)(3) of this section] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership

....

Sec. 10 [29 U.S.C. § 160]

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . .

....

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceeding, as provided in such 2112 of title 28, United States Code. Upon the filing of such petition, the Court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and 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. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. . . . Upon the filing of the record with it the jurisdiction of the court shall be exclusive. . . .

(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. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. 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 to grant to the Board such temporary relief or restraining order as it deems just and proper, and 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.

Relevant Provisions of the Labor Management Relations Act (29 U.S.C. §§ 141-197) are as follows:

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Sec. 302. [§ 186.] (a) [Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations] It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value--

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal

compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b) [Request, demand, etc., for money or other thing of value]

(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) [of this section].

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act [49 U.S.C. § 301 et seq.]) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: Provided, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) [Exceptions] The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (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; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for

study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, or this Act [under subchapter II of this chapter or this chapter]; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor- Management Reporting and Disclosure Act of 1959 [29 U.S.C. § 401 et seq.]; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2015, I electronically filed the foregoing 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 all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Dated at Washington, DC
this 21st day of September, 2015