

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

IN THE MATTER OF:

METALCRAFT OF MAYVILLE, INC.

**Respondent,
and**

Case No. 18-CA-178322

**DISTRICT LODGE NO. 10,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS OF AMERICA, AFL-CIO.**

Charging Party.

**REPLY BRIEF IN RESPONSE TO
COUNSEL FOR GENERAL COUNSEL'S
CROSS-EXCEPTIONS**

Submitted this 5th day of May, 2017.

Submitted by:

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**ATTORNEYS FOR THE RESPONDENT
METALCRAFT OF MAYVILLE, INC.**

SUMMARY OF ARGUMENT

Respondent has four responses to the Counsel for General Counsel's (CGC) cross-exceptions. They are: 1) Respondent will ultimately be found correct, and it is not merely a sound and reasonable basis for contending Wisconsin's Right-To-Work Law (WRTWL) applies, but, in fact, that is the law and the complaint will be dismissed. 2) Besides that, Respondent's position, as the ALJ determined, is sound and reasonable. 3) Respondent did not undermine the Union and Respondent's opinion is communication was more than appropriate, it was allowed under the law; § 8(c) of the National Labor Relations Act (the Act or NLRA). 4) CGC'S statements that *Penn Cork & Closures, Inc. 156 NLRB 411, 414 (1965), enforced, NLRB v. Penn Cork & Closures, Inc., 376 F.2d 52 (2d Cir. 1967)* was an afterthought and not the basis for Respondent's decision is both false and disingenuous. The ALJ stated,

Applying this standard to the facts here, I conclude that the Respondent had a sound arguable basis for contending that the Wisconsin right-to-work law prohibited continued dues checkoff. The Respondent's interpretation was based, at least in part, on the Board's decision in *Penn Cork*. That decision can be reasonably interpreted as linking union security and dues checkoff in certain circumstances, and thereby requiring the cessation of dues checkoff when a contractual union-security provision is invalidated. Moreover, and as noted above, the question of the impact of state right-to-work laws on dues-checkoff provisions has spawned countless lawsuits over the years. The decisions in those cases do not suggest that the parties contesting federal preemption of states' attempts to regulate dues checkoff were being unreasonable. (ALJD p. 23 line 1-15)

Points one through three have been adequately presented in our prior briefs to the Board. As to the fourth point above, not having earlier considered *Penn Cork*, the CGC knew or should have known that from the time of the initial filing of the Union charge and throughout the investigation and before the issuance of the complaint herein, Respondent relied in part on *Penn Cork* in numerous written submissions made to the NLRB and the *Penn Cork* arguments to the investigator of what now the ALJ refers to. Further, the Respondent's original Answer to the Complaint includes a discussion of *Penn Cork* in response to paragraph six which states,

6.(a) Since about June 4, 2016, Respondent ceased checking off dues for Unit employees and thereafter ceased remitting to the Union dues for Unit employees, and thereby modified Articles 25. 3 and 25.4 of the parties' collective-bargaining agreement.

ANSWER: Admit that Metalcraft suspended dues-checkoff but deny that the Company in any way modified, terminated, or unilaterally changed the terms of the agreement. Enforcement of the dues-checkoff provision through old authorization cards is not supported by Board law, both in *Penn Cork & Closures Inc.*, 156 NLRB 411 (1965), and as enforced by the Second Circuit Court of Appeals in *NLRB v. Penn Cork & Closures, Inc.*, 376 F.2d 52 (2d Cir. 1967, cert. denied 389 U.S. 843 (1967)). Under the law of *Penn*, once a union security clause is invalidated, the contract for check-off of dues between a union and its employees also becomes invalid and its terms are unenforceable. *Penn*, 156 NLRB 411, 414–15.
[...]

(GC Ex. 1(i))

The misplaced and inaccurate statement further illustrates just how far CGC will go in her efforts to support “compulsory unionism” criticized by the U.S. Supreme Court in the Trilogy¹ as discussed in *Plumbers Local 141 (International Paper Co., Southern Kraft Division)*, 252 NLRB 1299 (1980) *enfd.* 675 F.2d 1257 (D.C. Cir 1982) when the Court of Appeals stated,

This is precisely the “compulsory unionism” Congress had in mind when it passed § 14(b) and this is the core of membership the Supreme Court has interpreted § 14 to encompass. (*Id.* at 1262)

Dated at Milwaukee, Wisconsin, this 5th day of May, 2017.

/s/Thomas P. Krukowski

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¹ See *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), *Retail Clerks International Association Local 1625 v. Schermerhorn*, 373 U.S. 746 (1963) (*Retail Clerks I*), and *Retail Clerks International Association Local 1625 v. Schermerhorn*, 375 U.S. 96 (1963) (*Retail Clerks II*) (hereinafter collectively referred to as the “Trilogy”)