

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

METALCRAFT OF MAYVILLE, INC.

And

Case 18-CA-178322

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

**COUNSEL FOR GENERAL COUNSEL'S REPLY BRIEF
IN SUPPORT OF CROSS-EXCEPTION**

Counsel for General Counsel submits this Reply Brief in support of its Cross-Exception to the Decision of the ALJ. In its Cross-Exception, General Counsel excepted to the ALJ's conclusion that Respondent had a "sound arguable basis for contending that the Wisconsin right-to-work law prohibited continued dues check-off." (ALJD 22-23). In concluding that Respondent had a "sound arguable basis," the ALJ found Respondent had relied, at least in part, upon the Board's *Penn Cork* decision when it made the unlawful contract modification. *Penn Cork*, 156 NLRB 411 (1965). As described in the Cross-Exception and Brief in Support of the Cross Exception, the ALJ's finding that Respondent had a "sound arguable basis" should be rejected for three reasons: (1) there is no evidence that Respondent relied on the Board's *Penn Cork* decision or any other Board or federal case when making the unlawful contract modification; (2) even if Respondent had relied upon *Penn Cork*, nothing in *Penn Cork* suggests that Respondent was permitted to make the unlawful modification; and (3) the

Board's decision in *Sunshine Biscuits* makes clear that Respondent was prohibited from making such a modification. *Sunshine Biscuits*, 165 NLRB 167 (1967).

In its Answering Brief to the General Counsel's Cross-Exception ("Answering Brief to Cross-Exception"),¹ Respondent does not cite to any evidence that suggests it relied upon the *Penn Cork* decision at the time it made the decision to stop dues checkoff. Instead, Respondent argues that Counsel for General Counsel "knew or should have known" that Respondent had relied upon the *Penn Cork* decision because it had raised the *Penn Cork* decision in its Answer and in its defense to the unfair labor practice charge. As an initial matter, Respondent's arguments during the course of the investigation are not part of the record in this matter and therefore should be given no weight. Second, any arguments that Respondent raised in response to an unfair labor practice charge or complaint are irrelevant to the question of whether Respondent in fact and in good faith, relied upon the *Penn Cork* decision or any other case law at the time it made the decision to modify the contract. Lastly, there is ample evidence in the record which details Respondent's rationale at the time it made the decision to unilaterally cease checkoff in June 2016, as fully described in the GC's Brief in Support for the Cross-Exception. That evidence contradicts any contention that Respondent relied on *Penn Cork* or any other case at the time it decided to stop dues checkoff.

Furthermore, even had Respondent relied upon the *Penn Cork* decision, there is no language in that decision which permits Respondent to unilaterally, without even a

¹ While Respondent's brief was entitled, "Reply Brief in Response to Counsel for General Counsel's Cross-Exceptions," the contents of the brief make clear that it is actually an Answering Brief to the General Counsel's Cross-Exceptions under Section 102.46(d) of the Board's Rules and Regulations. To avoid confusion, it will be referred to as "Answering Brief to Cross-Exception."

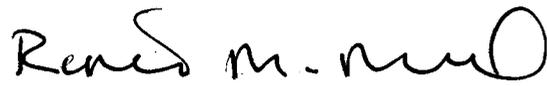
single employee request, stop checkoff for the entire unit. *Penn Cork*, 156 NLRB 411 (1965). Rather, *Penn Cork* merely permits an individual employee to revoke his or her authorization for checkoff after the elimination of union security by virtue of a deauthorization vote in the unit. There is absolutely no language in the *Penn Cork* decision which suggests that an employer can unilaterally revoke checkoff authorizations across-the-board for all of its employees following the elimination of union security due to right-to-work legislation. In its Answering Brief to Cross-Exception, Respondent does nothing to contradict Counsel for General Counsel's arguments on this point.

Also disregarded by Respondent is the Board's long-standing holding in *W.P. Ihrie & Sons, Division of Sunshine Biscuits, Inc.*, 165 NLRB 167 (1967), where the Board considered its holding in *Penn Cork* and rejected the very same argument Respondent makes here. In that matter, citing to *Penn Cork*, the Board held "such affirmative [deauthorization] vote does not automatically cancel existing authorizations for the checkoff of dues or alone require an employer to cease deducting dues in the face of a contractual checkoff provision." *Id.* at 167-168. Instead, the Board held in *Sunshine Biscuits* that the employer had unlawfully modified the contract by stopping checkoff for all employees, rather than for just those who had requested to revoke their authorizations. *Id.* Moreover, the Board's finding of an employer violation in *Sunshine Biscuits*, came after the Board's decision in *Bethlehem Steel*, 136 NLRB 1500 (1962), and before the decision in *Lincoln Lutheran*, 362 NLRB No. 188 (2015). In other words, regardless of the fate of *Lincoln Lutheran*, there is nothing in Board precedent which suggests that Respondent was permitted to cease checkoff in a wholesale fashion

during the term of the contract. Instead, the Board's decision in *Sunshine Biscuits* establishes that Respondent committed an unfair labor practice in doing so.

Counsel for General Counsel respectfully requests that the ALJ's finding that Respondent had a sound arguable basis for its modification be reversed for the reasons set forth in the Cross-Exception.

Respectfully submitted this 16th day of May, 2017

A handwritten signature in black ink, reading "Renée M. Medved". The signature is written in a cursive style with a large, looped "O" at the end.

Renée M. Medved, Counsel for General Counsel
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AFFIDAVIT OF SERVICE OF: COUNSEL FOR GENERAL COUNSEL'S REPLY
BRIEF IN SUPPORT OF CROSS-EXCEPTIONS

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 16, 2017, I electronically-filed the above-titled document with the National Labor Relations Board and served the above-entitled documents as noted below upon the following persons, addressed to them at the following addresses:

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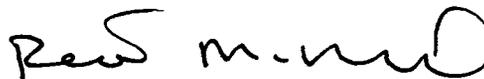
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5/16/2017

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