

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TEAMSTERS “GENERAL” LOCAL UNION
NO. 200, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA

and

Case 18-CB-202802

JULIO F. MAYEN, An Individual

BRIEF OF RESPONDENT
TEAMSTERS LOCAL 200

In this rather straightforward dispute, Respondent Teamsters Local 200 offers this short and hopefully succinct brief. It is largely devoid of citations, which is owing to the simplistic nature of the issues.

Charging Party began his employment at the Employer in March 2014; he voluntarily joined the Union and signed a checkoff authorization. (Facts ##10 & 11; Ex. 8) More than a year later, in July 2015, Charging Party resigned his employment; however, he seemingly reconsidered and resumed his same job just six weeks later, in August 2015. (Facts ## 12 & 13)

During the relevant timeframe, the applicable CBA (Ex. 6) included a union security provision at Article 2.2. That means that Charging Party owed

dues or some amount to the Union each month regardless of his membership status. The primary mode of payment for members like Charging Party is, of course, through checkoff at Article 2.3. Two additional facts need mentioning at this point: (1) there is no record evidence that Charging Party ever resigned his Union membership; and (2) there is no record evidence that Charging Party or the Employer ever notified the Union about Charging Party's brief pause in unit employment. And so the Union continued to deduct dues as before, and the Employer continued to remit dues as before.

Now here is the rub, as Hamlet would say: Charging Party **also** proceeded "as before" the pause in employment, meaning he accepted this arrangement and the continued validity of his checkoff authorization. Charging Party had a payment obligation under both Article 2.2 and because of his status as a member of the Union. He used his checkoff authorization, that selfsame one the Region deems invalid, to act validly to make his required payments post-pause. If the Union violated the Act by any "reuse" of that authorization, it did so in August 2015. After six months, which was around the end of February 2016, all was seemingly well, and indeed remained well through a few more seasons [and a few more 10(b) periods].

Only Charging Party's First Amended Charge mentions checkoff authorization validity, and it was filed on November 20, 2017. [Fact #2; Ex. 2(a)] That is more than **two years** after the alleged illegal acts by the Union, acts fully waived and acquiesced to by Charging Party.

ANALYSIS

The authorization states that it is “irrevocable” for “successive yearly” periods, meaning that it renewed on March 11, 2015 for a one-year period (i.e. through his pause in employment with the Employer). (Ex. 8) Of course, deductions do not occur where no dues are owing, for example if an employee pauses their employment for a leave of absence or, like Charging Party, has a quick flip-flop on whether to remain an employee; however, the authorization itself is not conditioned on dues being payable each month.

The authorization is also explicitly not conditioned on Local 200 Union membership, and the record reflects only that Charging Party joined and *remained* a member. Further still, there is no evidence that the Union was contemporaneously made aware that Charging Party momentarily paused employment and was almost immediately rehired. There is also no allegation that the Union accepted dues during the pause that were not owing, only that Charging Party himself utilized the authorization to make his required payments thereafter and for nearly two more years. Utilizing the authorization for two years was a prudent and effective decision by Charging Party.

Doing so caused no effect on Charging Party’s employment and concerned a wholly internal Union matter, and for those reasons the Complaint should be dismissed. The Complaint is also barred by the doctrine of waiver because Charging Party utilized the authorization as his mode of

complying with both the collective bargaining agreement's then-enforceable Union Security clause **and** to pay his Union membership dues. Charging Party retained his membership in Local 200, owes membership dues as a result, and allowed the authorization to effectuate payment.¹ Charging Party owed dues regardless of the mode of payment, and so any finding here that the Union must repay Charging Party would only result in a corresponding requirement that Charging Party repay Local 200.

The above analysis certainly brings to mind the medieval *reductio ad absurdum*, "How many angels can dance on the head of a pin?" What is this case actually doing, what purpose of the Act is it effectuating, if all it deals with is evaluating the validity of payment modes? Charging Party owed to Local 200 everything that was paid via the checkoff authorization; the only dispute is the validity of that authorization, meaning this is a contract matter without a damages issue, not a Section 7 or 8 matter.

There is another, even clearer reason to dismiss the complaint: 10(b). Any complaint is barred where (1) the operative events establishing the violation occurred more than 6 months prior to the filing of an unfair labor practice charge; and (2) the party has clear and unequivocal notice of a violation of the Act. The first prong is undoubtedly established; math says so

¹ It is important to note that even though Wisconsin became a "right to freeloader" state, meaning the current CBA (Ex. 7) has no effective union security clause, Charging Party still owes dues as a **member** in Local 200 regardless of his checkoff authorization's validity. There is no record evidence that Charging Party resigned his membership, and so Local 200 has accepted only those dues payments that Charging Party owes as a member, meaning there has been no unjust enrichment.

(two years is more than six months). The only question is when Charging Party had “clear and unequivocal notice” of the alleged acts here. A paycheck deduction constitutes such notice, especially when it fulfills an obligation Charging Party undoubtedly knew he still had to fulfill.

The Region will rely on *Kroger Co.*, 334 NLRB 847 (2001) to argue that even though the alleged violation occurred in August 2015, there were actually “new” violations each month thereafter and so, as it details in its Answer [Ex. 3(a) at p.3] only “[s]ince about January 20, 2017” has the Union been violating the Act for remedial purposes. That is an unreasonable leap. As then-Chairman Hurtgen stated in his concurrence in a later case, “*Kroger* was wrongly decided.”

In that case, the Charging Party signed a checkoff authorization during his initial employment with Kroger. He left his employment in November 1997, but returned to this employment in April 1998. He did not sign a new checkoff authorization. However, the employer and the union, in reliance upon the prior authorization, began the checkoff deduction of dues. The unlawful act was the deduction of dues in April 1998 without a new authorization. That fact was clear to the Charging Party. Thus, the charge of January 11, 1999 was untimely.

Allied Production Workers Union Local 12 (Northern Engraving Corp.), 337 NLRB No. 6 at 20 (2001).

The *Kroger* case dealt with a true departure from employment, one lasting **six months** (actually a prison sentence); the pause here was only **six weeks**. It is well and long established that 10(b) “runs from the date that the charging employees were adversely affected.” See *Whiting Milk Corp.*, 145

N.L.R.B. 1035, 1037-38 (1964), enforcement denied on other grounds, 342 F.2d 8 (1st Cir. 1965). If there was any adverse effect, and Local 200 denies that there was, it occurred in August 2015.

As to whether some adverse effect continued to occur each month, let us again differentiate *Kroger*. In that case, the charging party “resigned from the Union and requested that the Union cease causing dues to be deducted from his paycheck,” and all in Texas, which did not permit clauses like the applicable union security clause here. *Id.* at 848. And so again, this Complaint is a debate over dancing angels and not actual adverse effects, and it all comes far, far too late for the Act to have any remedial jurisdiction.

Local 200 requests dismissal of the Complaint, together with an award of costs and attorneys fees.

Dated this 8th day of May 2018.

Respectfully submitted,

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AFFIDAVIT OF SERVICE for Case 18-CB-202802

I hereby certify that today I electronically filed the foregoing BRIEF OF TEAMSTERS LOCAL 200 using the NLRB's Electronic Filings System. The undersigned also hereby certifies that I have caused a true and correct copy of the foregoing to be served upon the following via email and on this 8th day of May 2018:

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