

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

Case 18-CB-202802

and

JULIO F. MAYEN, An Individual

Renée M. Medved, Esq. and Angela B. Jaenke, Esq.,
for the General Counsel.

Kyle A. McCoy, Esq. and Scott D. Soldon, Esq. (Soldon
Law Firm, LLC), of Middleton, Wisconsin,
for the Respondent.

Osman A. Mirza, Esq. (The Law Office of Osman A.
Mirza), of Milwaukee, Wisconsin, for the
Charging Party.

DECISION

CHARLES J. MUHL, Administrative Law Judge. The General Counsel's complaint in this case alleges that, since January 20, 2017, Teamsters Local 200 unlawfully caused an employer to deduct union dues from the pay of Charging Party Julio F. Mayen and remit those dues to the Union. The complaint claims a valid dues-checkoff authorization did not exist for Mayen during that time period, because Mayen had a break in his employment. On March 22, 2018, the parties filed a joint motion, a stipulation of facts and a statement of issues presented, requesting that the case be decided without a hearing and based on the stipulated record. The General Counsel and the Respondent also filed statements of position with the motion. On April 4, 2018, via written order, I granted the motion and approved the stipulation of facts. On

May 8, 2018, the General Counsel and the Respondent also filed briefs.¹ Based on consideration of those briefs, the statements of position, and the entire stipulated record, I find that the Respondent violated Section 8(b)(1)(A) and (2) of the Act as alleged in the complaint.²

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FINDINGS OF FACT

I. JURISDICTION

10 The material events in this case took place while Mayen worked for Roundy's
 Supermarket, Inc. (Roundy's) at a facility located in Oconomowoc, Wisconsin. At that facility,
 Roundy's is engaged in the warehousing and retail sale of groceries and related products. In
 conducting its business operations during the calendar year ending December 31, 2016,
 Roundy's derived gross revenues in excess of \$500,000. During the same time period, Roundy's
 15 purchased and received, at its Oconomowoc, Wisconsin facility, goods valued in excess of
 \$50,000 from points located outside the State of Wisconsin. Accordingly and as the Respondent
 admits, I find that, at all material times, Roundy's has been an employer engaged in commerce
 within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent also admits, and I
 find, that it is a labor organization within the meaning of Section 2(5) of the Act.³

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II. ALLEGED UNFAIR LABOR PRACTICES

At the Roundy's facility in Oconomowoc, the Respondent represents a bargaining unit
 containing casual drivers, warehouse employees, and plant maintenance employees. That
 representation is reflected in collective-bargaining agreements, the most recent of which is
 25 effective from September 25, 2016 to September 25, 2019. The prior contract ran from September
 22, 2013 to September 24, 2016. Both agreements contained a dues-checkoff provision.⁴

¹ The Charging Party submitted letters stating that he was joining in the General Counsel's statement of position and brief.

² On July 20, 2017, Mayen initiated this case by filing the original unfair labor practice charge against the Respondent Union, the formal name of which is Teamsters "General" Local Union No. 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Respondent or the Union). Region 18 of the National Labor Relations Board (the Board) docketed the charge as Case 18-CB-202802. On November 20, 2017, Mayen filed a first amended charge. On November 28, 2017, the General Counsel issued a complaint, alleging that the Respondent violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). On December 7, 2017, the Respondent filed a timely answer to the complaint, denying the substantive allegation and asserting numerous affirmative defenses.

³ Stipulation of facts, pars. 6-8.

⁴ Jt. Exhs. 6 and 7. Article 2.3 of the current and prior collective-bargaining agreements provides:

The Employer agrees, for the term of this Agreement, to deduct Union dues, initiation fees and/or uniform assessments or a service fee from the wages of the employees who individually certify, in writing, authorization for such deductions. Such authorization shall be irrevocable for a period of one (1) year or one day after the termination date of this Agreement, whichever occurs sooner. It is the responsibility of the Union to obtain

On March 10, 2014, Mayen began working for Roundy's as a truck driver. In that position, he was included in the bargaining unit described above. On March 11, 2014, Mayen signed a union membership application and a dues-checkoff authorization form.⁵ The authorization stated:

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I, the undersigned hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union 200, and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.

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This authorization is voluntary and is not conditioned on my present or future membership in the Union.

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This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

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A little more than a year later on July 10, 2015, Mayen voluntarily resigned his employment from Roundy's. But on August 31, 2015, Mayen resumed working for Roundy's, as a newly-hired member of the bargaining unit. Upon his employment resumption, Mayen did not sign a new dues-checkoff authorization form. Nonetheless, since about November 2015 and continuing to date, Roundy's deducted dues from Mayen's pay and remitted the dues to the Union. These deductions were made pursuant to the prior checkoff authorization Mayen signed on March 11, 2014, at the start of his first employment stint with Roundy's.

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and deliver such authorization. The Employer agrees to deliver all sums deducted in this manner to the designated officer of the Union, payable to General Teamsters Local Union No. 200, Milwaukee.

⁵ Jt. Exh. 8.

ANALYSIS

5 The issue presented in this case is whether the authorization signed by Mayen lawfully permitted the Respondent to resume collecting union dues through checkoff, when Mayen was reemployed by Roundy's as a new hire 6 weeks after he resigned his initial employment.

10 The Board has long recognized that, apart from the requirement for periodic revocability set forth in Section 302(c)(4) of the Act, disputes involving dues-checkoff provisions essentially involve contract interpretation rather than interpretation and application of the Act. *Furr's, Inc.*, 264 NLRB 554, 556 (1982). Therefore, the Board has held there is nothing precluding an employee from individually agreeing to pay dues to a union whether or not the employee is a member of it and that the employee will pay such dues through a checkoff. *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328 (1991). The Board requires, however, that the employee's agreement to such an arrangement be manifested in "clear and 15 unmistakable language," as it constitutes a waiver of the employee's right to refrain from supporting the union. *Id.*

20 In *Kroger Co.*, 334 NLRB 847 (2001), the Board faced a situation strikingly similar to this case. Kroger and United Food and Commercial Workers Union Local 455 had a collective-bargaining agreement containing a dues-checkoff provision. Pursuant to the provision, Kroger was required to deduct and remit dues and service fees monthly to the union, where a lawfully executed authorization form was signed by the employee. As with the Respondent's form here, the union's authorization form in *Kroger* contained language authorizing dues checkoff, noting the voluntary nature of the arrangement, and setting forth the timeframe for submitting a 25 revocation request, absent which the authorization automatically renewed. The form contained the following additional language, not present on the Respondent's form here:

30 The Secretary-Treasurer of Local 455 is authorized to deposit this authorization with any Employer under contract with Local 455 and is further authorized to transfer this authorization to any other Employer under contract with Local 455 in the event that I should change employment.

35 On June 14, 1995, bargaining unit employee Allan Partain executed a checkoff authorization form. Four and a half months later, Partain terminated his employment. However, a little more than 5 months after doing so, Partain began working for Kroger again as a new hire. He did not execute a new checkoff authorization form, but Kroger resumed deducting and remitting dues to the union on Partain's behalf. Nine months after his rehire, Partain resigned his union membership and requested that the union cease causing dues to be deducted from his 40 paycheck. The union refused the request.

The Board concluded that the union's continued collection of union dues from Partain pursuant to checkoff violated Section 8(b)(1)(A) and (2) of the Act. The Board initially noted

that no per se rule exists that a checkoff authorization can never survive the severance of employment. To determine whether it does survive, the language of the authorization must establish a clear and unmistakable waiver by the employee to have dues deduction revived upon reemployment. The Board found that the language of Partain's checkoff authorization did not establish a waiver. Although the form did state it was transferable to other employers under contract with the union, the language did not specifically address reemployment by the same employer. The Board even suggested what language would have resulted in the checkoff authorization surviving the break in employment: "This authorization will remain effective if my employment with the Employer is terminated and I am later re-employed by the Employer."

The same conclusion must be reached in this case. Mayen's checkoff authorization form does not include the suggested language the Board offered in *Kroger* to address this situation. It does not address in any manner what happens if an employee severs the employment relationship and is later rehired by Roundy's. Thus, the language cannot constitute a clear and unmistakable waiver by Mayen allowing the continued collection of union dues through checkoff following his rehire. The authorization did not survive the break in Mayen's employment. The Respondent's action, therefore, violates Section 8(b)(1)(A) and (2).

In its brief, the Respondent attempts to distinguish *Kroger*, first on the basis that Mayen's severance of employment was only 6 weeks, not 5+ months like Partain's. But the length of the hiatus had no bearing on the *Kroger* outcome. As previously noted, the Board treats a dues-checkoff authorization as a contract and a contract may remain effective for an indefinite period, including through a severance of employment of any length. The language here sets forth that the authorization automatically renews from year to year, absent a properly timed request for revocation. Had the Respondent included the Board's suggested language addressing reemployment, its continued receipt of Mayen's dues through checkoff would not have been unlawful, irrespective of the length of the employment break. Second, the Respondent attempts to distinguish *Kroger* by noting the employee in that case resigned his union membership and asked the union to cease deducting dues. The record here establishes only that Mayen became a member upon his initial hire, not that he ever resigned his membership. But Mayen's membership status has no bearing on the method he chooses to pay any dues owed to the Respondent. Third, I reject the Respondent's claim that the complaint should be dismissed, because it involves an internal union matter beyond the Board's purview which has no impact on Mayen's employment. The Board implicitly found otherwise in *Kroger*, by ruling the union's conduct there was unlawful. Finally, the Respondent relies on the assertion of then Chairman Hurtgen, in his concurring opinion in *Allied Production Workers Local 12 (Northern Engraving Corp.)*, 337 NLRB 16, 20 (2001), that "*Kroger* was wrongly decided." Chairman Hurtgen would have dismissed the *Kroger* complaint on 10(b) grounds. Whether *Kroger* was rightly or wrongly decided is not a question within my purview as an administrative law judge to answer. My duty is to apply Board law as it presently exists to the facts of this case. *Austin Fire Equipment, LLC*, 360 NLRB 1176, 1176 fn. 6 (2014). Without question, *Kroger* is controlling precedent here and the outcome of applying *Kroger* to these facts is obvious.

The Respondent also argues that the complaint is barred by Section 10(b) of the Act. That section prohibits the issuance of a complaint based upon an unfair labor practice occurring more than six months prior to the filing of a charge with the Board. The dues-checkoff resumption for Mayen occurred around November 2015, and Mayen did not file his charge until July 20, 2017, well beyond six months. However, the Board rejected the same 10(b) argument in *Kroger*, holding that each occurrence of the unlawful dues deduction at the union's request constituted a separate violation of the Act. 334 NLRB 847, 848 fn. 3. The impact Section 10(b) has on this case is on the remedy, which is only retroactive to the 6-month period prior to Mayen's filing of the charge. *Id.* The Respondent also claims that the complaint is barred by the doctrine of waiver, because Mayen allowed dues deductions to resume upon his reemployment to pay his membership dues. Since each occurrence of unlawful dues deduction is a separate violation of the Act, I find no merit to this argument.

The Respondent next claims the stipulated record contains no basis to find it was notified about Mayen's break in employment and, absent the notification, it cannot be held liable for continuing to deduct dues upon Mayen's rehire. The stipulated record is silent as to the procedure used by the Respondent and Roundy's to insure compliance with the contractual dues-checkoff provision. Yet the Respondent acknowledges in its brief that dues deductions do not occur once an employee resigns employment. Roundy's was not issuing a paycheck to Mayen during his break in employment, so it also was not deducting and remitting dues for him. At a minimum, then, the Respondent knew or should have known that Roundy's had not deducted dues for Mayen for a period of 6 weeks and then resumed doing so. If it had inquired into the lack of dues deductions, the Respondent would have become aware of Mayen's break in employment. Pursuant to the checkoff provision in the parties' contract, the Respondent then had the responsibility to "obtain and deliver" a new authorization upon Mayen's rehire.

Lastly, the Respondent contends the complaint should be dismissed because, even if utilizing dues checkoff was technically illegal, Mayen still owes dues to the Respondent as a member of the Union. The Respondent thus suggests the General Counsel is spinning his wheels litigating this case for no meaningful purpose. I reject this contention. As counsel for the General Counsel correctly points out, dues checkoff must be voluntarily entered into by employees. Both the Act and Board law require it. 29 U.S.C. § 302(c)(4); *Bluegrass Satellite, Inc.*, 349 NLRB 866, 867 (2007). Thus, a union cannot make dues checkoff compulsory, irrespective of the money a member may owe. *American Screw Co.*, 122 NLRB 485 (1958) (finding unlawful a union's requirement that employees travel to another city to pay dues if they did not utilize checkoff, because it essentially made checkoff compulsory). If the complaint were dismissed on non-effectuation grounds, dues checkoff would be rendered compulsory for Mayen during the applicable time period. Thus, I do not agree, as the Respondent suggests, that ignoring the law here would effectuate the purposes of the Act.

For all these reasons, I find the Respondent violated Section 8(b)(1)(A) and (2), as alleged in the General Counsel's complaint.⁶

CONCLUSIONS OF LAW

- 5 1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. Roundy's Supermarket, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 10 3. The Respondent violated Section 8(b)(1)(A) and (2) by, since about January 20, 2017, and continuing thereafter, causing Roundy's Supermarkets, Inc. to deduct union dues from Charging Party Julio F. Mayen's pay without a valid dues-checkoff authorization having been executed by Mayen.
- 15 4. The above unfair labor practice affects commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

20 Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, the Respondent must reimburse Julio F. Mayen for all sums improperly deducted from his wages in payment of union dues, beginning January 20, 2017 and continuing, with interest.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended order.⁷

ORDER

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The Respondent, Teamsters "General" Local Union No. 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, successors, and assigns, shall

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⁶ In its answer, the Respondent also asserted the affirmative defenses of estoppel, laches, and unclean hands. However, it makes no argument in its statement of position or brief in support of these defenses and thus, I do not address them on the merits. *Multiband EC, Inc.*, 363 NLRB No. 100, slip op. at 1 fn. 2 (2016).

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

5 (a) Causing or attempting to cause Roundy's or any employer to deduct union dues from the wages of employees pursuant to checkoff authorizations which are no longer valid; and

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

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

15 (a) Reimburse Charging Party Julio F. Mayen for all sums improperly deducted from his wages in payment of union dues, beginning on January 20, 2017 and continuing, with interest;

20 (b) Inform Roundy's in writing that the March 11, 2014 checkoff authorization for Charging Party Julio F. Mayen is not valid and request that it cease deducting and remitting dues to the Respondent on Mayen's behalf immediately. The Respondent shall provide a copy of this written request to Mayen;

25 (c) Within 14 days after service by the Region, post at the Respondent's offices copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Further, if the Respondent maintains bulletin boards at Roundy's facility, the Respondent also shall post Notices on each such bulletin board during the posting period. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material;

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(d) Mail a copy of the notice to Charging Party Julio F. Mayen;

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

- (e) Forward to the Regional Director for Region 18 signed copies of the notice sufficient in number for Roundy's, if willing, to post at its facility, where notices to employees are customarily posted; and
- 5 (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C., June 6, 2018



Charles J. Muhl
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT cause or attempt to cause Roundy's Supermarkets, Inc. to deduct union dues from the wages of employees, pursuant to checkoff authorizations which are no longer valid.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL reimburse Julio Mayen for all sums improperly deducted from his wages in payment of union dues with interest.

WE WILL inform Roundy's Supermarkets, Inc. in writing that the checkoff authorization for Julio Mayen is not valid and request that it cease deducting and remitting dues to the Union on Mayen's behalf immediately. **WE WILL** provide a copy of this written request to Mayen.

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

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Federal Office Building, 212 3rd Avenue S, Suite 200, Minneapolis, MN 55401-2221
(612) 348-1757, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/18-CB-202802 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (414) 930-7203.