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International Brotherhood of Teamsters Local 385 (Walt Disney Parks and Resorts U.S., Inc. d/b/a Walt Disney World Co.; United Parcel Service, Inc.) and Hector L. Santana-Quintana and Sharon Masuda and Heather Raleigh and Arlene C. Behrens and Mitchell Kent and Jacob Greene and Baringthon Brudy and Dolores Nicosia. Cases 12–CB–136934, 12–CB–149945, 12–CB–149949, 12–CB–152211, 12–CB–152912, 12–CB–159647, 12–CB–162916, and 12–CB–180519

June 20, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, KAPLAN, AND EMANUEL

On March 22, 2017, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Parties Sharon Masuda, Heather Raleigh, Mitchell Kent, and Jacob Greene (collectively, the Represented Charging Parties) filed answering briefs,¹ and the Respondent filed replies. The General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief. The Represented Charging Parties filed cross-exceptions, a supporting brief, and a reply brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions only to the extent consistent with this Decision and Order.³

¹ Charging Parties Hector Santana-Quintana, Arlene Behrens, Baringthon Brudy, and Dolores Nicosia are not represented.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Pursuant to the General Counsel's exceptions, we have corrected several inadvertent errors made by the judge in his decision, such as misspellings, typographical errors, misnomers, and mistaken references. These inadvertent errors have not affected our disposition of this case.

³ The Respondent argues that the allegations regarding Charging Party Santana-Quintana should be dismissed because the Regional Director's decision to hold Santana-Quintana's charge in abeyance for 14 months before determining that further proceedings were warranted violated Sec. 10(b) under *Ducane Heating Corp.*, 273 NLRB 1389

Based on the judge's factual findings that the Respondent repeatedly and deliberately failed to respond in any manner to the Charging Parties' letters, telephone calls, and/or in-person inquiries regarding revocation of their dues checkoff authorizations, we affirm his conclusions that the Respondent violated Section 8(b)(1)(A) by

(1985), enfd. mem. 785 F.2d 304 (4th Cir. 1986), and was an abuse of the General Counsel's prosecutorial discretion. In *Ducane Heating*, the Board held that "a dismissed charge may not be reinstated outside the 6-month limitations period of [Sec.] 10(b) absent special circumstances in which a respondent fraudulently conceals the operative facts underlying the alleged violation." *Id.* at 1390. However, *Ducane Heating* is not applicable here because the Regional Director did not dismiss Santana-Quintana's charge but instead held it in abeyance. Further, the Regional Director's decision to hold Santana-Quintana's charge in abeyance was a prosecutorial decision about what steps to take before issuing a complaint, and the General Counsel has unreviewable discretion to make such prosecutorial decisions under Sec. 3(d) of the Act. See *BCI Coca-Cola Bottling Co.*, 361 NLRB 839, 843 fn. 11 (2014); see also *NLRB v. Food & Commercial Workers Local 23*, 484 U.S. 112 (1987).

The Respondent also argues that the allegations regarding Masuda and Raleigh should be dismissed because the Regional Director dismissed their charges on July 31, 2015, but then reinstated them on February 12, 2016. However, at the time of reinstatement, Masuda's and Raleigh's appeals of the Regional Director's dismissals were pending before the General Counsel, and the Board has held that a Regional Director's reinstatement of a previously dismissed charge while an appeal of the dismissal is pending is "proper and consistent with longstanding practice and in accord with *Ducane Heating Corp.*, supra." *Children's National Medical Center*, 322 NLRB 205, 205 (1996).

The judge included a notice-mailing remedy in his recommended Order, but omitted the Board's standard notice-posting remedy. We shall include the Board's standard notice-posting remedy in the Order. Because the Respondent's members who are affected by its violations number in the thousands and are spread across central Florida, we shall also retain the judge's notice-mailing remedy to ensure that those members are informed of the Order. Member Pearce joins his colleagues in including the Board's standard notice-posting remedy in the Order, but he would not retain the judge's notice-mailing remedy, as the judge did not articulate why the standard notice-posting remedy would be insufficient to remedy the effects of the Respondent's unfair labor practices.

We shall further modify the judge's recommended Order to conform to our findings and the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified. Additionally, we shall amend the judge's remedy to require the Respondent to pay any interest owed at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We note that the Respondent is required to only pay interest to Charging Parties Santana-Quintana and Behrens because it has already reimbursed them for the dues deducted from their wages and remitted to the Respondent from May 20, 2014 to September 22, 2014, and from October 31, 2014 to May 19, 2015, respectively.

We reject, as unwarranted, the Represented Charging Parties' requested extraordinary remedies because we find that the Respondent's violations are not "so numerous, pervasive, and outrageous that such remedies are necessary to dissipate fully the coercive effects of the unfair labor practices found." *Federated Logistics & Operations*, 340 NLRB 255, 256 (2003) (internal quotations omitted), enfd. 400 F.3d 920 (D.C. Cir. 2005).

restraining and coercing the Charging Parties in the exercise of the rights guaranteed them by Section 7 of the Act.⁴

The judge also found that the Respondent violated Section 8(b)(1)(A) by failing to honor the Charging Parties' membership resignation requests. We adopt the judge's findings that, as alleged in the complaint, the Respondent violated Section 8(b)(1)(A) by failing to honor Masuda's and Raleigh's resignation requests. Nevertheless, the Respondent has correctly pointed out that the complaint does not allege such violations regarding Charging Parties Santana-Quintana, Behrens, Kent, Brudy, Nicosia, and Greene. However, "the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United Sales*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d Cir. 1990).

Here, the resignation issue is closely connected to the subject matter of the complaint. The complaint alleges

⁴ Members Kaplan and Emanuel find it unnecessary to pass on the judge's duty-of-fair-representation analysis. Member Pearce agrees that it is unnecessary to pass on the judge's duty-of-fair-representation analysis as to Charging Parties Santana-Quintana and Behrens. Because the Respondent denied Santana-Quintana's and Behrens' timely requests to revoke their dues checkoff authorizations, Member Pearce finds that they were thereby restrained and coerced in the exercise of their Sec. 7 right to refrain from supporting the Respondent. However, Member Pearce would rely on the judge's duty-of-fair-representation analysis as to Charging Parties Masuda, Raleigh, Kent, Greene, Brudy, and Nicosia. Although these Charging Parties' revocation requests were untimely, Member Pearce agrees with the judge's finding that the Respondent acted arbitrarily by ignoring the Charging Parties' revocation requests and by failing to respond to their repeated efforts to request revocation in any way, in some instances for months at a time. He also observes that this conduct was more than mere negligence or mismanagement. See, e.g., *Amalgamated Transit Union Local 1498 (Jefferson Partners)*, 360 NLRB 777, 778 (2014).

The complaint does not allege that the mandatory window periods for revocation of dues checkoff authorizations are unlawful, and Members Pearce and Emanuel note that the Board has long found that such mandatory window periods are lawful when, as here, the parties voluntarily agreed to them. See, e.g., *Frito-Lay, Inc.*, 243 NLRB 137, 139 (1979) ("The employees voluntarily executed checkoff authorizations The authorizations provided that they would be irrevocable except for two escape periods Since the employees did not revoke their authorizations during either of these escape periods, the Union and the Employer were justified in considering the authorizations still valid. Hence, we see no good reason to hold unlawful Respondent Union's request (or the Employer's acquiescence in that request) that the Employer continue to deduct dues pursuant to such outstanding checkoff authorizations.").

Member Pearce notes that while the Respondent's centralized management of resignation requests and requirement that resignation requests be submitted in writing were lawful and served a legitimate union interest, the Respondent did not lawfully implement its system for handling these resignations.

that the Respondent failed to honor or respond to the dues-checkoff revocation requests of Charging Parties Santana-Quintana, Behrens, Kent, Brudy, Nicosia, and Greene, and those Charging Parties' resignation requests were set forth in the same communications as their requests to revoke their dues-checkoff authorizations.

We also find that the resignation issue has been fully litigated. In response to the complaint allegations that it failed to honor Masuda's and Raleigh's resignation requests, the Respondent's only defense—which the judge discredited—was that it sent responsive letters that stated, in part, "Your written request to forfeit your membership has been received and honored effective this date." The Respondent entered into evidence similar letters that it claims to have sent in response to the resignation requests of Santana-Quintana, Behrens, Kent, Brudy, Nicosia, and Greene. Accordingly, it seems clear that the Respondent would not have altered its conduct or presented additional evidence at the hearing if specific allegations had been made concerning those employees' resignation requests. See *Pergament United Sales*, *supra*, 296 NLRB at 335.

Turning to the merits, we agree with the judge's findings that the Respondent failed to honor the resignation requests of Santana-Quintana, Behrens, Kent, Brudy, and Nicosia in violation of Section 8(b)(1)(A). The Respondent admitted that it did not honor Santana-Quintana's resignation request for 4 months and did not honor Behrens' resignation request for over 9 months. See *Affiliated Food Stores*, 303 NLRB 40, 40 fn. 2, 45 (1991) (finding that a union's 10-week delay in honoring a resignation request violated Section 8(b)(1)(A)). Further, the judge discredited the Respondent's claims that it sent letters in response to the initial resignation requests of Kent, Brudy, and Nicosia.

However, we reverse the judge's finding that the Respondent violated Section 8(b)(1)(A) by failing to honor Charging Party Greene's resignation request because Greene admitted that, shortly after he initially requested to resign from membership in the Respondent, he received a letter from the Respondent honoring his request.

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters, Local 385, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to honor employees' requests to resign from membership in the Respondent.

(b) Failing and refusing to honor employees' timely requests to revoke their dues-checkoff authorizations and to respond in any manner to their untimely requests to revoke their dues checkoff authorizations.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Honor the requests of Baringthon Brudy and Dolores Nicosia to resign from membership in the Respondent.

(b) Honor the requests of Mitchell Kent, Jacob Greene, Baringthon Brudy, and Dolores Nicosia to revoke their dues checkoff authorizations.

(c) Reimburse Sharon Masuda, Heather Raleigh, Mitchell Kent, Jacob Greene, Baringthon Brudy, and Dolores Nicosia for the dues deducted from their wages and remitted to the Respondent since February 15, 2015, January 8, 2015, March 31, 2015, June 14, 2015, June 21, 2016, and July 6, 2016, respectively, with interest, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(d) Pay interest to Hector Santana-Quintana and Arlene Behrens on the dues deducted from their wages and remitted to the Respondent from May 20, 2014 to September 22, 2014, and from October 31, 2014 to May 19, 2015, respectively.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Orlando, Florida facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 12, 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 employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respond-

ent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense, a copy of the signed notice to all of its members who have been represented by the Respondent during their employment with Walt Disney Parks and Resorts U.S., Inc. d/b/a Walt Disney World Co. at its Lake Buena Vista and Bay Lake, Florida facilities and United Parcel Service, Inc., at its Orlando and Gainesville, Florida facilities since May 20, 2014.

(g) Within 14 days after service by the Region, deliver to the Regional Director for Region 12 signed copies of the notice in sufficient number for posting by Walt Disney Parks and Resorts U.S., Inc. d/b/a Walt Disney World Co. at its Lake Buena Vista and Bay Lake, Florida facilities and United Parcel Service, Inc., at its Orlando and Gainesville, Florida facilities, if they wish, in all places where notices to employees are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. June 20, 2018

Mark Gaston Pearce, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED AND MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to honor your requests to resign your union membership.

WE WILL NOT fail and refuse to honor your timely requests to revoke your dues checkoff authorizations, and WE WILL NOT fail and refuse to respond in any manner to your untimely requests to revoke your dues checkoff authorizations.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL honor the requests of Baringthon Brudy and Dolores Nicosia to resign from membership.

WE WILL honor the requests of Mitchell Kent, Jacob Greene, Baringthon Brudy, and Dolores Nicosia to revoke their dues checkoff authorizations.

WE WILL reimburse Sharon Masuda, Heather Raleigh, Mitchell Kent, Jacob Greene, Baringthon Brudy, and Dolores Nicosia for the dues deducted from their wages and remitted to us since February 15, 2015, January 8, 2015, March 31, 2015, June 14, 2015, June 21, 2016, and July 6, 2016, respectively, with interest.

WE WILL pay interest to Santana-Quintana and Arlene Behrens on the dues deducted from their wages and remitted to us from May 20, 2014, to September 22, 2014, and from October 31, 2014, to May 19, 2015, respectively.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 385

The Board's decision can be found at www.nlr.gov/case/12-CB-136934 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.



Rafael Aybar, Esq., for the General Counsel.
Thomas J. Pilacek, Esq., of Winter Springs, Florida, for the Respondent.
John C. Scully and Alyssa K. Hazelwood, Esqs. (Right to Work Legal Defense Foundation), of Springfield, Virginia, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Kissimmee, Florida, on October 3-4 and November 21-22, 2016. The consolidated complaint alleges that the International Brotherhood of Teamsters, Local 385 (Local 385 or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act)¹ by engaging in a pattern of intentionally ignoring or delaying its responses to the requests at various times by eight Local 385 members (the Charging Parties), employed by Walt Disney Parks and Resorts US, Inc. d/b/a Walt Disney World Co. (Disney or WDW) and the United Parcel Service, Inc. (UPS), to revoke dues check-off authorizations and/or for information regarding how to revoke dues check-off authorization.

Local 385 denies the allegations, alleging that (1) the dues revocation requests were untimely and did not conform to with the requirements of the dues-checkoff authorization form signed by Charging Parties; (2) one or more of the charges in the complaint are asserted in an improper attempt to equate their rights under *Communications Workers of America v. Beck*, 487 U.S. 735 (1988) with requests to revoke dues-checkoff authorizations; and (3) Local 385 does not have an obligation to honor *Beck* requests because its collective-bargaining agreements with Disney and UPS are in Florida, a "right-to-work" state in which application of "agency shop" collective-bargaining agreement (CBA) provisions are prohibited.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Local 385 and the Charging Parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Disney, a Florida Corporation with its principal office and place of business located in Lake Buena Vista, Florida, has been engaged in the operation of a vacation, recreational and entertainment complex, where it annually derives gross revenues in excess of \$500,000 and purchases and

¹ 29 U.S.C. §§ 151-169.

receives at its State of Florida facilities goods valued in excess of \$50,000 directly from points outside Florida. Similarly, UPS, an Ohio and New York Corporation with its principal office and place of business located in Atlanta, Georgia, and with places of business located throughout the United States, including the State of Florida, has been engaged in the operation in the pick-up and delivery of packages for companies and individuals. Local 385 admits, and I find, that Disney and UPS are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Local 385, as well as the Service Trades Council (STCU) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Local 385's Representation of Disney and UPS Employees

1. Jurisdiction

The STCU is a labor organization comprised of six labor organizations, including Local 385. Local 385 is the exclusive labor representative for approximately 9,000 employees in up to 52 bargaining units covering 20 counties within Florida. At all relevant times, Local 385 and Disney have been parties to collective-bargaining agreements that are effective by their terms from March 30, 2014 to September 21, 2019. Among those CBAs, Local 385 is a party to five separate agreements with Disney in Orlando. They include CBAs between Disney and the STCU for approximately 4000 to 5000 full-time and part-time employees. Two of those bargaining units are at issue and are defined as follows:

Regular Full-Time

All of WDW's regular full time employees who are in the classifications of work listed in Addendum A of the March 30, 2014 to September 21, 2019 regular full-time collective-bargaining agreement between STCU and WDW at Walt Disney World Resort in Bay Lake, Florida, excluding all other employees, security and supervisors as defined in the Labor Management Relations Act of 1947, as amended.²

Regular Part-Time

All of WDW's regular part time employees who are in the classifications of work listed in Addendum A of the March 30, 2014 to September 21, 2019, regular part-time collective-bargaining agreement at the Walt Disney World Resort in Lake Buena Vista, Florida, excluding all other employees, security and supervisors as defined in the Labor Management Relations Act of 1947, as amended.³

Section 5 at Articles 8 of the part-time employees' CBA and Article 9 of the full-time employees' CBA provide for the periodic withholding of union membership dues, initiation fees, and/or service charges for employees who authorize such withholdings by Disney, and provides for the monthly remittance of those monies to the member unions of the STCU, including Local 385.⁴

Six of the charging parties (Santana-Quintana, Masuda, Ra-

leigh, Behrens, Kent, and Nicosia) are Disney employees who were covered by either the full-time or part-time STCU CBAs.

Local 385 is also party to five CBAs with UPS, including the National Master United Parcel Service Agreement (NMA). Local 385 has approximately 2000 to 2500 members covered by the NMA at approximately 45 to 50 work locations. Two of the charging parties (Brudy and Greene) are UPS employees who are covered by current NMA, which is effective by its terms from August 1, 2013 to July 31, 2018, covering the terms and conditions of employment of the following employees:

Feeder drivers, package drivers, sorters, loaders, unloaders, porters, office clericals, clerks, mechanics, maintenance personnel (building maintenance), car washers, UPS employees in its air operation, and certain other employees as described in the August 1, 2013 to July 31, 2018 collective-bargaining agreement between Local 385 and its member unions, and UPS.⁵

Article 3, Section 3 of this collective-bargaining agreement provides for the periodic withholding of initiation fees, dues and/or uniform assessments of Local 385 and remittance of those monies to Local 385 where it has geographic jurisdiction over the unit employees who have authorized such withholdings by Disney, and provides for the monthly remittance of those monies to the member unions of the STCU.⁶

2. Union staff

Clay Jeffries has been the president of Local 385 since September 1, 2016. Prior to that, he served as secretary-treasurer from January 1, 2001 until August 2016. Jeffries also served as business agent from 1997 through 2016. As secretary-treasurer, he reported to the president, Michael Stapleton. Jeffries was responsible for the communications and financial operations of Local 385. He negotiated agreements, was responsible for processing all membership dues for Local 385 and participated on grievance panels involving UPS.

Between May 2014 and June 2016, Local 385's headquarters in Orlando, Florida housed the offices of approximately 13-14 employees, including Jeffries. Local 385's staff included: business agents Nidia Grajales, Concannon and Walt Howard; Michelle Concannon, an office secretary responsible for insurance and pensions, and receiving, opening, date-stamping letters (but not envelopes) and distributing Local 385's mail; Laura Stapleton, a bookkeeper, updates Local 385 records and posts dues to the individual records of members.⁷

As secretary-treasurer, Jeffries' regular work hours were from Monday through Friday, 8 a.m. to 5 p.m. However, Jeffries often traveled from the office to visit employees in the various bargaining units and was usually out of the office during the third week of the month attending grievance arbitration regular panels with UPS. He was also out of the office for up to three times a year for up to 2 weeks at a time participating in deadlocked grievance panels.

⁵ GC Exh. 4 at 2.

⁶ Id. at 7-9.

⁷ Jeffries was frequently vague and evasive, as in this instance when asked whether staff reported to him and he professed not to understand the question. (Tr. 29.)

² GC Exh. 2.

³ GC Exh. 3.

⁴ Id. at 7.

3. Procedure for resigning from Local 385 and revoking dues authorization

The check-off authorization forms for both STCU-covered employees at Disney and UPS employees provide that they renew themselves annually unless revoked within a specified window period. The STCU window period for Disney employees is between 20 and 10 days prior to the anniversary of the date the employee signed the card. The Local 385 window period for UPS employees is between 75 and 60 days prior to the membership anniversary date. Both forms require that a request to revoke check-off authorization must be by written notice to both the union and the employer. Signed dues authorization forms are filed with Local 385 and copies provided to Disney and UPS for payroll processing of dues deductions.

Once processed with Disney, Local 385 continues to receive automatic remittances from Disney until the latter determines that an employee has transferred out of Local 385's jurisdiction or has separated from employment, or LOCAL 385 notifies Disney that a timely revocation request has been received. In the case of UPS, Local 385 bills the employer for check-off remittances on a weekly basis. When a timely revocation request is received, Local 385 is supposed to remove the employee from its UPS billings.

4. Local 385's Practices in Processing Resignation and Dues Revocation Requests

Local 385 maintains approximately 100,000 check-off authorization cards in its physical files. They are maintained physically because a copy of the card cannot be scanned into its electronic system known as TITAN. The information in the TITAN system for anyone on check-off, including both UPS and Disney employees, is based on the employee's social security number, which is written on the authorization card.

Local 385 began keeping electronic files for each member about 8–10 years ago, and hard copies were shredded. However, its computer system crashed in 2015 and Local 385 reverted to hard copy files. If a revocation request does not fall within the applicable window period, Local 385 is supposed to send a letter explaining that, with a copy of the member's authorization card. If a Disney employee meets the window requirement, Local 385 sends an email to the employer's payroll office. In the case of a UPS employee, Local 385 simply removes the member from the dues check-off billing.

Local 385 does not, however, have a form letter that is used when members request information about their window period. Nor does Jeffries usually respond to telephone voicemail messages from members seeking to revoke their dues authorization. Local 385 premises that longstanding policy and practice on a memorandum issued to Local 385 office staff in or around 2006 by then president and business manager Michael Stapleton, relating to members' requests to resign from the union and cancel dues deductions:

We continue to receive complaints from the National Labor Relations Board about employees of the Local Union giving out wrong information to member/referrals about Forfeiting, Resigning, Quitting, or any other form of stopping their dues deductions or their Membership with the Local Union.

The Local Union has complied and will comply with the National Labor Relations Act by giving out ONLY the proper information on Forfeiting, Resigning, Quitting, or any form of stopping their dues deductions or their Membership with the Local Union.

If anyone (Member or Referral Hall etc.) wants to Forfeit, Resign, Quit or any form of cancelling Membership or Dues deduction THEY MUST STATE THEIR DESIRE IN WRITING TO THE SECRETARY-TREASURER ONLY. *The Secretary-Treasurer will send them a written response to their request.*

NO ONE is to answer ANY questions to anyone (Member or Referral Hall etc.) in person, over the phone, or in any written correspondence with/or in regards to Forfeiture, Resigning, Quitting or any form of stopping their dues deductions or their Membership with the Local Union. YOU MUST REFER ANYONE WITH QUESTIONS TO THE SECRETARY-TREASURER ONLY!!!

Anyone that comes into or mails in a written request to the Local Union to Forfeit, Resign, Quit or any form of cancelling Membership or Dues deduction must be sent to drop off their letter with Paula Graf ONLY for date stamping!!

If we receive any more complaints from the Labor Board about misinformation disciplinary action will follow.

This interoffice memo is not to be handed out or posted. It is for your education and compliance only.⁸ (emphasis in original)

Consistent with Local 385 policy since 2006, Jeffries has been the only Local 385 employee who has handled members' requests to revoke their dues withholding authorization, even when he is on leave. Letters requesting revocation are kept in member files, which occupy about 45–50 cabinets. While some files are kept electronically, membership and authorization dues forms are maintained in paper files. An attempt to store these records electronically failed when the storage load caused Local 385's computer system to crash in 2015. Local 385 currently has about 100,000 authorization cards in its physical files.

Upon receipt of a written request to revoke dues authorization, Jeffries checks with the bookkeeper, Laura Stapleton, to confirm membership in the unit. He then checks the dues check-off authorization card to determine whether the request is within the window and is supposed to respond to the member in writing. If the revocation request falls outside the time period for such action, Jeffries is supposed to send the member written correspondence with a copy of the dues authorization card. If the request falls during the window period, Jeffries will notify the employer to stop their deductions electronically or through the billing process. In Disney's case, Jeffries is supposed to notify the employer by email and remove the employee from Local 385's dues billing sheet.

Jeffries does not respond to telephone or voicemail requests to revoke dues authorization because they are not in writing.

⁸ This memorandum was issued in September 2006 when Paula Graff was staff secretary. (R. Exh. 1.)

Nor does he treat member requests for information regarding their membership and the applicable window period for dues revocation as a request to revoke dues withholding. He is supposed to let them know whether they signed a dues check-off authorization or not. If a member sees Jeffries in person and verbally requests dues revocation, he instructs them to make the request in writing.

5. Local 385's enrollment process

Local 385's collective-bargaining agreements with Disney and UPS have union dues check-off provisions authorizing the employers to deduct union dues from employees' paychecks.

Individuals who sign and date dues check-off authorizations on triplicate forms used by Local 385 at UPS and other employers receive a copy upon signature. Local 385 does not receive a copy of SCTU dues check-off authorization cards executed by individuals who sign and date them when they are not employed within Local 385's authorized jurisdiction under the SCTU/Disney CBA, but subsequently transfer to a function over which Local 385 has jurisdiction under the CBA; therefore, Local 385 is unable to provide a copy or information about revocation to such individuals. Local 385 is not responsible for SCTU practices and procedures which do not conform with Local 385's practices and procedures or the actions or inactions of other constituent unions, over which it has no control.

B. Charging Parties Seek to Resign and Revoke Dues Check-Off Authorization

Each of the eight Charging Parties, except for Dolores Nicosia, signed dues-checkoff authorizations that by their terms were irrevocable for 1 year or the term of the applicable CBA, whichever was sooner, and were subject to automatic renewal unless the employee provided written notice during a certain window period before the renewal date. The window period for dues-checkoff authorization revocation for the Charging Parties who worked for Disney (Santana-Quintana, Masuda, Raleigh, Behrens, Kent and Nicosia) was "not more than 20 days and not less than ten (10) days" prior to their periodic renewal dates. The window period for Charging Parties who worked for UPS (Greene and Brudy) was "at least sixty [60] days, but not more than seventy-five [75] days" prior to their periodic renewal date. The dues-checkoff authorizations also expressly stated that they were not contingent on "my present or future membership" with Local 385.⁹

1. Hector L. Santana-Quintana

Hector Santana-Quintana began his employment with Disney as a part-time bus driver at Disney in June 2013 and became full time in September 2013.¹⁰ He joined the Union on June 1, 2013, by signing the following 3 sections of a union authorization card: Application for Membership and Check-Off of Service Charge; Service Fee Authorization; and Check-off Authorization for Political Contributions from Wages. Union dues

started being withheld shortly thereafter. The annual window period for revocation of his dues was May 12 to 22. Santana-Quintana, however, was not provided with a copy of the card at the time.¹¹

On May 20, 2014, Santana-Quintana sent a letter by certified mail resigning his union membership, revoking his union dues check-off authorization, and requesting the return of his signed authorization card. Santana-Quintana's letter, which was timely sent, was received by the Union and a return receipt was signed by Michelle Concannon on May 21, 2014.¹²

After not hearing from Local 385, Santana-Quintana filed an unfair labor practice charge on September 17, 2014. On September 22, after receiving a copy of Santana-Quintana's charge from the Board, along with a copy of the May 20 letter, Jeffries sent a letter to Santana-Quintana acknowledging the latter's timely request to revoke his union membership and dues check-off authorization. He explained that Santana-Quintana's letter had been misfiled and enclosed a check in the amount of \$148.50 reimbursing Santana-Quintana for union dues deducted from his paycheck from May 21 to September 22.¹³

Jeffries' response did not, however, include a copy of Santana-Quintana's authorization card as requested and, on November 17, 2014, Santana-Quintana filed an amended charge complaining of that omission. Jeffries responded by mailing Santana-Quintana's card to him on December 11, 2014.¹⁴

2. Sharon Masuda

Sharon Masuda, a full-time character captain at Disney, signed a STCU check-off authorization form on March 7, 2000. Unbeknownst to Masuda, her annual window period for revoking her authorization was February 15 to 25, as she did not receive a copy of her authorization card at the time. Union dues deductions commenced immediately.

In a letter sent on August 4, 2014, and received by the Union on August 5, 2014, Masuda notified Jeffries that she was resigning her membership in the Union and revoking her dues authorization. She also requested, in case she was outside the window period for revoking her dues, a copy of her dues authorization card and information regarding the applicable dates.¹⁵

I am employed by Walt Disney World. This letter is to inform you that I hereby resign as a member of Teamsters Local #385. My resignation is effective immediately. Since I have resigned my membership in the union, you must now immediately cease enforcing the dues check-off authorization agreement that I signed.

If you refuse to accept this letter as both an effective resignation and an immediately effective [dues] check-off revocation,

¹¹ GC Exh. 5.

¹² Jeffries was not credible about whether he was aware of Santana-Quintana's letter when it was received by the Union in or around May 21, 2014. He was vague and hesitant when asked if he found Santana-Quintana's file after receiving the charge and his excuse that the letter was misplaced was not credible either. (GC Exh. 6.)

¹³ GC Exh. 7; R. Exh. 5.

¹⁴ GC Exh. 8; R. Exh. 6.

¹⁵ GC Exh. 20(a)-(b).

⁹ GC Exhs. 5, 9, 14, 29, 56, 63, and 66; R. Exh. 7 at 2.

¹⁰ Santana-Quintana, who appeared pursuant to subpoena by the General Counsel and refused to meet with him prior to the hearing, was a credible witness. (Tr. 114-115.)

I ask that you promptly inform me, in writing, of exactly what steps I must take to effectuate my revocation of the dues check-off authorization. *More specifically, if you contend that I must meet a “window period” in order to revoke my dues check-off authorization, I ask that you promptly send me a copy of the actual dues deduction authorization form that I signed, and also tell me specifically what “window period” dates I must meet in order to revoke the dues check-off authorization.* (emphasis in original)

The Union did not respond to Masuda’s letter.¹⁶ Masuda, however, did not give up. Using sample form letters from the National Right To Work Legal Defense Foundation (NRTW) website, Masuda sent 4 more virtually identical letters between September 18, 2014, and November 20, 2014, notifying Local 385 resigning her union membership and requesting revocation of her union dues check-off authorization. Jeffries did not reply to any of these letters.¹⁷

On November 21, 2014, Masuda also sent an email to Disney requesting a copy of her authorization card.¹⁸ On November 24, 2014, Disney replied that it was no longer in possession of Masuda’s authorization form, which had been returned to Local 385.

On December 8, 2014, Masuda visited Local 385’s offices and attempted to meet with Jeffries in order to get her authorization card and resign from the union. She spoke with Laura Stapleton, who told her that Jeffries was not in the office and she needed to write a letter. Masuda explained that she had already written several letters, so Stapleton took her contact information and said someone would call her. No one called that day or the next and, on December 10, 2014, Masuda placed a telephone call to Jeffries, but got his voicemail and left him a message.¹⁹

Several months elapsed and Masuda received no response. On March 9, 2015, she sent Local 385 another letter, this time by certified mail. On March 10, 2015, Masuda learned from Disney’s payroll department that she signed her authorization card on or about the time she commenced her employment in

March 2003. Local 385 finally responded to Masuda on March 10, 2015, accepting her resignation from the union, but denying her request to revoke the dues check-off authorization as untimely. On February 19, 2016, Masuda sent another letter to Local 385 requesting resignation and revocation. Jeffries received the letter, but did not reply to Masuda. Instead, he emailed Disney on February 25, 2016, to stop deducting dues from Masuda’s paycheck. On February 25, 2016, union dues were deducted from Masuda’s paycheck for the last time.²⁰

3. Heather Raleigh

Heather Raleigh, also a full-time character at Disney, signed a STCU dues-checkoff authorization card on January 28, 2007,²¹ and has had dues deducted beginning on February 28, 2007.²² At the time, HERE Local 362 was the STCU member union representing Raleigh’s unit. As of March 2007, her union dues were remitted to Local 385. According to her authorization form, the annual window period for revoking her dues authorization was January 8 through January 18.

At some point in 2014, Raleigh decided to resign her union membership. She accessed the NRTW website for information about the resignation process, which advised union members to ascertain the annual window period for taking such action. On November 13, 2014, using a form letter from the NRTW website, Raleigh mailed a letter to Local 385 resigning and revoking her union dues for non-CBA purposes. She also sent a letter to Disney’s payroll office on November 13 informing of her union resignation and requesting they stop deducting dues. Disney responded that the dues deduction would have to be requested by Local 385.²³ The Local 385 letter, stamped received on November 14, stated:

I hereby resign as a member of Teamsters Local 385. My resignation is effective immediately. I will continue to meet my lawful obligation of paying a representation fee to the union under its “union security” agreement with Walt Disney Parks and Resorts.

Furthermore, I object to collection and expenditure of a fee for any purpose other than my pro rata share of the union’s costs of collective bargaining, contract administration, and grievance adjustment, as is my constitutional right under *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Pursuant to *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), I request that you provide me with my First Amendment procedural rights, including: reduction of my fees to an amount that includes only constitutionally chargeable costs; notice of the calculation of that amount, verified by an inde-

¹⁶ Jeffries testified that he replied to Masuda’s August 4, 2014 letter in a letter, dated August 8, 2014, and enclosed a copy of her authorization card. I credit Masuda’s credible testimony over Jeffries’ uncorroborated testimony that such a letter was actually mailed to Masuda. (R. Exh. 7 at 1–2; Tr. 105, 407–408, 473–475, 525.) Masuda’s testimony was consistent with that of the other charging parties who testified that they too never received responses from the Union to their resignation/revocation/information request letters. To refute such a claim, the Union did not call the employee responsible for receiving and mailing correspondence—Michelle Concannon. As such, there can be no presumption of regularity that Jeffries’ letters were received.

¹⁷ Based on the previous explanation regarding the credibility of Masuda vs. Jeffries as to whether the Union mailed out replies, I find that the Union did not mail out his replies to Masuda, dated November 3 and 17, 2014. (Tr. 86–89, 101, 409–410, 526; R. Exh. 8 at 1–2; R. Exh. 9 at 1–2.)

¹⁸ Masuda credibly testified that she sent the 4 letters, including 3 by regular mail, after reading advice on the NRTW website that she needed to know what her union membership anniversary date was in order to resign from the union. (GC Exh. 19–24; Tr. 84–89, 100–101.)

¹⁹ Masuda’s credible testimony regarding her call to Jeffries was undisputed. (Tr. 91–93, 110–111.)

²⁰ Masuda conceded that, based on the information contained in her authorization card, every letter that she sent Local 385 was outside the window period, except for the February 19, 2016 letter. (GC Exh. 24–28; Tr. 97–111.) However, she credibly testified that she was unaware of the window period because she did not recall when she signed the form. (Tr. 113.) Jeffries had no excuse for neglecting to respond to any of Masuda’s letters, relying instead on his notification to Disney to stop withholding dues from her paycheck. (Tr. 419–420.)

²¹ GC Exh. 29.

²² GC Exh. 30–32.

²³ GC Exh. 33, 35.

pendent certified public accountant; and notice of the procedure that you have adopted to hold my fees in an interest-bearing account and give me an opportunity to challenge your calculation and have it reviewed by an impartial decision maker.

Accordingly, I also hereby notify you that I wish to authorize only the deduction from my wages of representation fees limited to those costs that are lawfully chargeable under the First Amendment to the United States Constitution. If I am required to sign a form to make that change, please provide me with the necessary form.

Please reply promptly. Any further collection or expenditure of dues or fees from me made without the procedural safeguards required by the First Amendment to the United States Constitution will violate my civil rights under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, and the U.S. Constitution.

Finally, please consider this objection to be permanent and continuing in nature.

Local 385 did not respond to that letter.²⁴ Accordingly, on November 20, Raleigh went to Local 385's office and spoke to Nidia Grajales, the referral hall administrator. Grajales informed Raleigh that she needed to speak with Jeffries, but he was not in the office. As Raleigh was leaving, she called Jeffries' telephone number and left a voicemail message explaining that she was resigning her union membership, revoking her dues-check off authorization, and wanted a copy of her dues authorization card. Raleigh left another voicemail message the next day, November 21. After leaving the second message, Raleigh called and spoke with bookkeeper Laura Stapleton, who also referred her to Jeffries. Jeffries did not respond to either voicemail message. On November 24, 2014, desperate to ascertain her anniversary date in order to determine the window period for withdrawal, Raleigh again contacted Disney's human resources office seeking to obtain a copy of her authorization card in order to ascertain her anniversary date, but was unsuccessful.

Not one to give up, Raleigh left another voicemail for Jeffries on December 1, 2014. Again, he did not respond. The next day, Raleigh spoke with Grajales in the front office. Grajales in turn, referred her to Laura Stapleton. Stapleton told Raleigh that she did not have her card, but Jeffries just arrived. Raleigh went to Jeffries' office and finally got to meet with him. She explained that she left several voicemail messages requesting a copy of her dues authorization form, but never heard back. After getting Raleigh's identifying information, Jeffries told Raleigh that it would take a few days to locate her form. Raleigh called Jeffries on December 5, 2014, and left a voicemail to ascertain whether Jeffries finished his investiga-

tion of her file. Once again, Jeffries did not respond.²⁵

Raleigh initiated a new round of pursuit notifying Jeffries and Stapleton by certified mail of her resignation and revocation of dues on February 22 and 27, 2015, along with email notification to Disney on February 27.²⁶ The letters to Local 385 contained identical language and were received shortly after they were mailed:

I am employed by Walt Disney Parks and Resorts in the Right to Work state of Florida. Effective week ending March 7th, 2015, I resign from membership in the Teamsters Local 385 Union and all of its affiliated unions. My union anniversary date as provided to me by Walt Disney Parks and Resorts Global HR Operations Representative, Yamira, is March 4, 2007. This fulfills the requirement to resign within a 10 day window of my union anniversary date.

Since I have resigned my membership in the union, you must now immediately cease enforcing the dues check-off authorization agreement that I signed. The dues check-off authorization was signed solely in conjunction with, and in contemplation of, my becoming a member of the union and, as such, is no longer valid. See *IBEW (Lockheed Space Operations Company)*, 302 NLRB 322 (1991); *Washington Gas Light Co.*, 302 NLRB 425 (1991) (employer in RTW state must cease dues deduction upon receipt of resignation/revocation).

If you refuse to accept this letter as both an effective resignation and an immediately effective dues check-off revocation, I ask that you promptly inform me, in writing, of exactly what steps I must take to effectuate my revocation of the dues check-off authorization.

Furthermore, I object to collection and expenditure of a fee for any purpose other than my pro rata share of the union's costs of collective bargaining, contract administration, and grievance adjustment, as is my constitutional right under *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Pursuant to *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), I request that you provide me with my First Amendment procedural rights, including: reduction of my fees to an amount that includes only constitutionally chargeable costs; notice of the calculation of that amount, verified by an independent certified public accountant; and notice of the procedure that you have adopted to hold my fees in an interest-bearing account and give me an opportunity to challenge your calculation and have it reviewed by an impartial decision maker.

Accordingly, I also hereby notify you that I wish to authorize only the deduction from my wages of representation fees limited to those costs that are lawfully chargeable under the First

²⁴ Raleigh credibly testified that she never received Local 385's November 17, 2014 letter allegedly sent via regular mail. She lived at the same address for 3 years and only recently moved to another address. (Tr. 222-225; R. Exh. 14 at 1-2.) Moreover, for the reasons previously stated, I do not credit Jeffries' testimony that Local 385 mailed the November 17 letter. (Tr.421-422.)

²⁵ I based the findings regarding Raleigh's conversations with Jeffries and other Local 385 staff, as well as voicemail messages left for Jeffries, between November 20 and December 5, 2014, on Raleigh's credible testimony. (Tr. 230-235.) Jeffries, on the other hand, had no memory of ever meeting with or receiving voicemail messages from Raleigh, which I find highly incredible and consistent with Jeffries pattern of ignoring resignation and revocation requests. (Tr. 460-461.)

²⁶ Raleigh also delivered the February 22 letter to Concannon. (GC Exh. 36-38; Tr. 236-238.)

Amendment to the United States Constitution. If I am required to sign a form to make that change, please provide me with the necessary form.

Please reply promptly. Any further collection or expenditure of dues or fees from me made without the procedural safeguards required by the First Amendment to the United States Constitution will violate my civil rights under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, and the U.S. Constitution.

The letter I have sent on Thursday, November 13th, 2014 which was signed for by your office and all other phone calls, emails, and personal visits since have been ignored from Teamsters and I was never given a response. I have kept records of every attempt to contact the union and if I am not notified in writing by March 7th, 2015 that my resignation from the union has been approved and processed, I will have no further choice but to retain legal counsel and contact the National Labor Relations Board. This notice will be sent via certified USPS Mail, electronically via email, as well as in person on Tuesday, February 24th, 2015 and understand this is the last formal request you will receive directly from myself and not a lawyer, and consider this objection to be permanent and continuing in nature.

Jeffries finally responded on February 27, March 2 and 5, 2015, but still omitted information as to Raleigh's anniversary date. The letters contained identical language:²⁷

Your written request to forfeit your membership has been received and honored effective this date. However, please be aware that your revocation of membership does not automatically absolve you from your responsibility to continue to pay a service fee regardless of your membership unless and until you provide the appropriate written notice of revocation within the time specified in the check-off authorization agreement.

The application for membership and check-off authorization and assignment, which you signed on *January 28, 2007* specifically, provides that payment of this fee "is not conditioned on my present or future membership in the Service Trades Council Union or any of its affiliates." It further states:

"This authorization shall remain in effect until revoked by me and shall be irrevocable for a period of one (1) year from the date hereof or until the termination date of any applicable collective bargaining agreement, whichever occurs sooner, and unless I revoke this authorization by sending written notice to my Employer and the Union not more than (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective bargaining agreement between my Employer and the Union, whichever occurs sooner; this authorization shall be automatically renewed from year to year."

Because of this language, to which you agreed, you are obligated to continue to pay the service fee by way of check-off pending written notice of revocation provided within the specified time.

²⁷ R. Exhs. 15–17; GC Exh. 39–41.

Jeffries' February 27 letter crossed in the mail with another letter by Raleigh on the same date renewing her request to resign her union membership and revoke her dues check-off authorization.²⁸ She also sent a copy of her letter to Disney with an explanation that Local 385 was ignoring her requests.²⁹ Still not having received the information she needed in order to comply with Local 385's window requirement for revoking dues authorization, Raleigh filed a charge on April 13, 2015.

In a letter, dated March 5, Jeffries finally provided Raleigh with the date that she signed the authorization form and standard language relating to the window period for dues revocations. A copy of her dues check-off form, however, was not enclosed.³⁰

Nearly a year elapsed before Raleigh followed up with similar resignation and revocation requests in letters, dated January 15, 16, 17, and 18, 2016, all sent by certified mail, return receipt requested.³¹ The letters contained virtually identical language:

I am employed by Walt Disney Parks and Resorts and have resigned as a Union Member previously in 2015. Based on information given to me by the Union, I hereby revoke my Dues Deduction Authorization immediately. If this is not sufficient, notify me immediately as to what I must do to revoke my dues. My union anniversary date as provided to me by the responses given to me by Clay Jeffries on February 27th, 2015, March 2nd, 2015, and March 5th, 2015 is January 28th, 2007. This fulfills the requirement to resign within a 10 day window of my anniversary date, but not longer than 20 days.

This notice will be sent via certified USPS Mail every day from now until January 28th, 2016 as well electronically via email to ensure that this notification has been received and consider this objection to be permanent and continuing in nature. My lawyer, John Scully, has also received this notice. Please reply promptly.

Jeffries did not respond to any of these letters. None did he ever send Raleigh a copy of her union authorization card.³² Instead, he sent an email to Disney on January 29, 2016, requesting that it stop deducting union dues from Raleigh's paycheck.³³ Raleigh's Local 385 union dues were no longer deducted from her paycheck beginning on February 4, 2016.³⁴

4. Arlene Behrens

Arlene Behrens has been employed by Disney since November 2012. She was initially assigned to work at the turnstiles. On November 13, 2012, Behrens signed a dues check-off form

²⁸ GC Exh. 37.

²⁹ GC Exh. 38.

³⁰ R. Exh. 17 at 1.

³¹ GC Exh. 42–45.

³² Given Jeffries pattern and practice of ignoring member requests for the return of their dues authorization cards I credit Raleigh's testimony over his that he never complied with her requests for a copy of that document and that she finally saw a copy of it when the General Counsel showed it to her shortly before the hearing. (Tr. 241–242; 421–422, 424–425.)

³³ R. Exh. 18; 32.

³⁴ GC Exh. 46–47.

allowing Disney to deduct dues from her paycheck and remit them to HERE, Local 362. She was not, however, provided with a copy of her completed form at the time. Based on her check-off form, the Behrens' annual window period to revoke her authorization was October 24 through November 3.³⁵

On June 11, 2013, Behrens transferred to a bus driver position, which came under the labor jurisdiction of Local 385. At that point, Disney deducted dues from Behrens paycheck and remitted her dues to Local 385 until May 2015.³⁶

At some point during the summer of 2013, Behrens contacted Local 385 to resign her membership and revoke her dues-checkoff authorization. She spoke with Laura Stapleton, who instructed her to submit her request in writing. By certified letter dated September 12, 2013, Behrens submitted a request to resign her union membership and revoke her dues check-off authorization. Local 385 did not respond to Behrens' September 12, 2013 letter, so she followed up with a telephone call and inquired with Laura Stapleton about the status of her written request. Stapleton was not helpful. Instead of following up or assuring Behrens that she would look into the matter, Stapleton questioned why Behrens wanted to resign and told her that she needed to speak with Jeffries. Over the next 2 months, Behrens called Jeffries and left over 20 telephone messages for him inquiring about her letter. Jeffries did not respond to any of her calls.³⁷

Nearly a year lapsed before Behrens learned from coworkers about the window period applicable to dues revocation requests. On October 31, 2014, she sent a resignation and dues revocation request letter to Local 385 by certified mail. In the letter, Behrens also requested any information applicable to the resignation and revocation process, including any applicable window period for revocation, and a copy of her signed check-off authorization form.³⁸

Michelle Concannon, Local 385's secretary, received the October 31 letter. Once again, there was no response from Local 385. About a week later, Behrens called Laura Stapleton at Local 385 to inquire about the letter and got another evasive response. Utterly indifferent to Behrens' request, Stapleton referred her once again to Jeffries and suggested she resend the letter. Armed with proof that the letter had been received, Behrens ignored that suggestion.³⁹

Still having received no response to her October 31, 2014 letter, Behrens spoke to Local 385 business agent Walt Howard about a month or two later and asked him to speak with Jeffries about the letter. Six more months elapsed, however, without any response from Local 385. Realizing that Local 385 was doing everything it could do to stall her departure, Behrens filed unfair labor practice charges on May 12, 2015 in Case 12-CA-152211.

³⁵ GC Exh. 14.

³⁶ GC Exh. 48-52.

³⁷ Behrens' credible testimony was undisputed. (Tr. 191-197; GC Exh. 53(a)-(c).)

³⁸ GC Exh. 54.

³⁹ Jeffries' excuse that the October 31 letter was misplaced was not credible, given his pattern of ignoring member resignation and revocation requests, coupled with Laura Stapleton's indifference and hostility when contacted by Behrens about the letter. (Tr. 198-200, 428-429.)

On May 19, 2015, Jeffries finally responded by sending an email to Disney requesting that it stop deducting union dues from Behrens' paycheck.⁴⁰ It was not until August 11, 2015, nearly 3 months later, that Jeffries corresponded with Behrens and enclosed a refund \$224 check for dues deducted from November 2014 to May 2015. In the letter, Jeffries attributed the delay in responding to Local 385 misplacing her letter of October 31, 2014. He also failed to enclose a copy of her dues-checkoff authorization card as she requested.⁴¹

5. Mitchell Kent

Mitchell Kent has been employed by Disney as a full-time bus driver since April 20, 2013. He signed a dues check-off authorization form on April 20, 2013.⁴² Since that time, he has had union dues deducted from his paycheck. The annual window period to revoke his authorization was from March 31 through April 10. However, Kent did not receive a copy of his dues check-off authorization form either at the time he signed it or at any time thereafter.⁴³

On March 19, 2015, Kent contacted Disney's payroll department to inquire about revoking his union dues authorization. On March 20, 2015, he called Local 385 and spoke with Laura Stapleton. He informed her that he wanted to resign and revoke his union dues authorization. Stapleton informed Kent that he needed to submit that request in writing to Jeffries.⁴⁴ Kent followed up by submitting his resignation and dues revocation request by certified mail to Jeffries on March 20.⁴⁵ Local 385 received the letter, but neither Jeffries nor any other union official responded. Over the next 2 months, Kent left several voicemail for Jeffries and Walt Howard alluding to his March 20 letter. Those messages were also ignored and he filed an unfair labor practice charge 6 days later.⁴⁶

By letter to Local 385, dated April 18, 2016, Kent again notified the organization that he was resigning his union membership and revoking his dues-checkoff authorization. By letter dated April 29, 2016, Jeffries responded with a form letter supplying the date Kent signed the authorization form and the language setting forth the applicable window period. Kent received this correspondence, but a copy of his dues check-off authorization form was not enclosed. Disney has continuously deducted union dues from Kent's paycheck since April 2013

⁴⁰ R. Exh. 20; GC Exh. 52.

⁴¹ GC Exh. 55; R. Exh. 19.

⁴² I credit Kent's testimony that he was not provided with a copy of the card when he signed it and had not seen it until the General Counsel showed it to prior to the hearing. (Tr. 135-138; GC Exh. 56; R. Exh. 21 at 3.)

⁴³ GC Exh. 57.

⁴⁴ Kent's credible testimony regarding his conversation with Stapleton was undisputed. (Tr. 140-142.)

⁴⁵ Kent's March 20, 2015 correspondence did not include a request for a copy of his dues authorization card. (GC Exh. 58; R. Exh. 22 at 2.)

⁴⁶ I did not credit Jeffries' testimony that he responded to Kent in a letter, dated, March 27, 2015, and enclosed a copy of his dues-checkoff authorization form. (Tr. 442; R. Exh. 22 at 3-4.) Kent credibly denied ever receiving such a letter and left several voicemail messages for Jeffries that were not returned. In fact, Kent first saw Jeffries' letter when the General Counsel showed it to him shortly before the hearing. (Tr. 143-147; GC Exh. 58; R. Exh. 22 at 2.)

through the present.⁴⁷

6. Dolores Nicosia

Dolores Nicosia has been employed by Disney since June 14, 1995. She was initially hired as a bus driver. In 1999, Nicosia was promoted to the position of bus driver training coordinator. Her daughter, Debra Nicosia also works for Disney. She was hired as a character performer on March 17, 2002, and has worked in other part-time and full-time positions since that time. Debra has been on medical leave since January 1, 2016.

Dolores Nicosia has been a union member since July 26, 2002, based on a dues-checkoff authorization card that bears the signature of ‘Debra’ Nicosia, but bears Dolores’ address, telephone and social security number. That form, which has served as the basis for deducting Local 385’s deduction of union dues from Dolores Nicosia’s paycheck since October 2003, was actually signed by her daughter, Debra. Debra, however, has neither been a member of Local 385 nor ever had union dues deducted from her paycheck. Based on the card signed by Debra Nicosia, but attributable to Dolores Nicosia, the window period for revocation was between July 6 and July 16 each year.⁴⁸

In about April or May 2016, Dolores Nicosia left several telephone messages for Jeffries, inquiring how to resign from union membership and revoke her dues check-off authorization. However, neither Jeffries nor any other Local 385 official responded.⁴⁹ By certified letter, sent in late May 2016 and received by Local 385 on June 1, 2016, Dolores Nicosia resigned her union membership and requested revocation of her dues check-off authorization, effective June 14, 2016.⁵⁰

Local 385 did not respond to Nicosia’s letter.⁵¹ Accordingly,

⁴⁷ Given Jeffries less than credible testimony and indifference to the resignation requests of members, I find, based on Kent’s credible testimony, that a copy of his dues check-off form was not enclosed with Jeffries response. (Tr. 137, 148–149, 155–157; 440–441; GC Exh. 60–61; R. Exh. 21 at 1–2.)

⁴⁸ It is undisputed that Local 385 does not have a record of a dues check-off form signed by Dolores Nicosia. (Tr. 53–54, 482; R. Exh. 31 at 3; GC Exh. 9, 12, 15.) While there is no evidence that Dolores ever signed a dues authorization card, she conceded that she became a union member at some point. (Tr. 292–310, 319.) Debra’s testimony that she did not sign such a card in July 2002 was not credible. She conceded that the first letter looked like her handwriting, but failed to recognize the rest of the signature. Moreover, other aspects of Debra’s testimony were not credible. While there is insufficient evidence to conclude that Debra, 16 years old at the time, signed the form because she was underage and ineligible to work, the circumstances are suspicious. She has lived with Dolores for nearly all of the past 15 years and appeared evasive in conceding that someone signed the authorization form. Most peculiar was that the social security number listed on the form belonged to Dolores. (Tr. 126–133.)

⁴⁹ While I credited Dolores’ testimony that she left messages for Jeffries in 2016, I did not accord any weight to her uncorroborated testimony that she left similar messages for Jeffries and other union officials in 2012. (Tr. 299–302, 319.)

⁵⁰ The letter was dated June 14, 2016, even though it was sent 2 weeks earlier. (GC Exh. 10, 16.)

⁵¹ Although Nicosia was not credible regarding the circumstances by which the 2002 authorization form was signed, I credit her denial over Jeffries uncorroborated claim that he responded to her June 2016 resig-

in late June 2016, Nicosia left a telephone message for Jeffries stating that Local 385 had not responded to her letter dated June 14, 2016, and asking whether there was anything else she needed to do in order to revoke her dues-checkoff authorization and whether her request was timely. Jeffries again failed to respond.⁵²

Shortly afterwards, Dolores Nicosia contacted Disney payroll’s office explaining her efforts to resign from Local 385 and stop the deduction of union dues from her paycheck. That effort was unsuccessful and, as of September 22, 2016, Disney continued to deduct \$12 in union dues from Nicosia’s paychecks.⁵³

7. Jacob Greene

Jacob Greene has been employed by UPS since August 21, 2006, as a part-time unloader in Gainesville, Florida. On August 28, 2008, Greene signed a dues authorization card. He received a carbon copy of the form at the time, but was subsequently unable to locate it.⁵⁴ The authorization card stated, in pertinent part:

... I understand that under current law, I may elect “non-member” status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that non-members who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request. . . .

Checkoff Authorization And Assignment

I, Jacob Greene 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 _____, and direct such amounts so deducted to be

nation and revocation letter and informed her of an anniversary date of July 26, 2002, based on GC Exh. 9. (Tr. 56, 305, 454–458; R. Exh. 31 at 2.) Consistent with my previous findings, there is neither documentary proof of mailing nor testimony by the Local 385 employee responsible for mailing documents that his letter of June 3, 2016 was actually mailed to Nicosia.

⁵² I based this finding on Nicosia’s undisputed testimony. (Tr. 306, 319–320.)

⁵³ GC Exh. 12, 13(h.)

⁵⁴ GC Exh. 66; R. Exh. 26 at 2.

turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.

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

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 (6) 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.

Based on the terms of his check-off authorization, Greene's annual window period to revoke his dues authorization was June 14 to 29. By letter to Local 385, dated August 13, 2013, Greene requested to resign his union membership and revoke his dues check-off authorization. In a letter dated August 16, 2013, Jeffries responded to Greene with a form letter supplying the date Greene signed the authorization form and the language setting forth the applicable window period.⁵⁵

On September 19, 2013, Greene submitted his resignation and dues revocation request. In identical letters to Jeffries and then-President Michael Stapleton, the letter, which Local 385 received a few days later, stated in pertinent part:⁵⁶

. . . Since I have resigned my membership in the union, you must now immediately cease enforcing the dues check-off authorization agreement that I signed. That dues check-off authorization was signed solely in conjunction with, and in contemplation of, my becoming a member of the union and, as such, is no longer valid. *See IBEW (Lockheed Space Operations Company)*, 302 NLRB 322 (1991); *Washington Gas Light Co.*, 302 NLRB 425 (1991) (employer in RTW state must cease dues deduction upon receipt of resignation/revocation).

If you refuse to accept this letter as both an effective resignation and an immediately effective dues check-off revocation, I ask that you promptly inform me, in writing, of exactly what steps I must take to effectuate my revocation of the dues check-off authorization, in accordance to federal law. *More specifically, if you contend that I must meet a "window period" in order to revoke my dues check-off authorization, I ask that you promptly send me a copy of the actual dues deduction authorization form that I signed, and to tell me specifically what "window period" dates I must meet in order to revoke the dues check-off authorization.* (emphasis in original)

By letter dated October 3, 2013, Jeffries responded to Greene with a form letter supplying the date he signed the authorization form and the language setting forth the applicable window pe-

⁵⁵ Greene did not rebut Jeffries' testimony that he responded to Greene in a letter, dated August 16, 2013. (R. Exh. 27; Tr. 449.) Greene's September 19, 2013 letter requesting more information regarding the revocation process, confirmed the continuation of Jeffries' pattern of refraining from providing requested copies of members' authorization cards.

⁵⁶ GC Exh. 68; R. Exh. 26 at 3-4.

riod.⁵⁷

Subsequently, Greene submitted substantially similar resignation and dues revocation notices on August 14, 2014 and May 18, 2015. In each case, Local 385 received and date stamped the letters a few days later. By letter dated August 22, 2014, Jeffries responded with a form letter supplying the date Greene signed the authorization form, which included a reference to the annual window period for revoking his dues authorization. Greene received this letter, but a copy of his dues check-off authorization form was not enclosed. Jeffries did not, however, mail a response to Greene's May 18, 2015 letter. Had he done so, Greene would have had sufficient time to submit a timely request to revoke his dues authorization during the period of June 15 to 30, 2015.

Still unsuccessful in getting his union dues deductions revoked, Greene followed up with voicemail messages for Michael Stapleton and Jeffries in or around June 2015. In his messages, Greene inquired about the status of his dues revocation requests. None of his voicemail messages were returned.⁵⁸

Greene's last resort was to reach out to UPS Human Resources Department on June 19, 2015. He explained his unsuccessful efforts, commencing with his May 19, 2015 request to have Local 385 revoke his union dues check-off authorization and asked for UPS' assistance in stopping the dues deductions. That approach was also unsuccessful, as UPS has continued deducting dues from his Greene's paycheck.⁵⁹

8. Baringthon Brudy

Baringthon Brudy began working for UPS on April 26, 1999 as a loader in Fargo, North Dakota. In 2004, he transferred to UPS operations in Tampa, Florida. In September 2013, Brudy transferred to UPS operations in Orlando, Florida. After commencing work in Orlando, Brudy joined Local 385 by signing a dues check-off authorization form on September 4, 2014. According to his authorization form, his 60 to 75 day window to revoke his dues authorization was June 21 through July 6 each year.⁶⁰

In early July 2015, Brudy called Local 385's office and inquired into revoking his union membership. He was informed to submit his request in writing to Jeffries. By certified mail on July 18, Brudy submitted a request to Local 385 resigning his membership and revoking his dues check-off authorization.⁶¹ Local 385 did not respond and, in early August, Brudy fol-

⁵⁷ Greene credibly denied that a copy of his dues check-off authorization form was enclosed in Jeffries' October 3 response. (Tr. 274-275, 286, 448; GC Exh. 69; R. Exh. 26 at 1.)

⁵⁸ I credit Greene's testimony that Jeffries failed to include a copy of his dues authorization form and that he never received Jeffries' May 22 letter responding to his May 18 letter. His testimony was corroborated by his subsequent follow-up voicemails to Jeffries or Stapleton, all of which went unreturned. Greene did move to another residence during the period at issue, but he credibly testified that all of his mail was forwarded to the new location. (GC Exh. 70-73; R. Exh. 24-25; Tr. 277-288.)

⁵⁹ GC Exh. 74.

⁶⁰ Brudy did not recall receiving a copy of his dues authorization form at the time he signed it, but it was similar to the one that he signed while working in Fargo. GC Exh. 63; R. Exh. 29; Tr. 162, 165.)

⁶¹ GC Exh. 64; R. Exh. 29.

lowed up with several telephone calls to Jeffries. Brudy left voicemail messages for Jeffries and, on one occasion, was informed that Jeffries would be in the office on August 21.⁶²

On August 21, 2015, Brudy went to Local 385's offices to meet with Jeffries. A staff member informed Brudy that Jeffries would be out of the office that day. However, Brudy spoke with Michael Stapleton about the status of his resignation and dues revocation request. Stapleton wrote down Brudy's information and said that he would give it to Jeffries, but Brudy was not satisfied with that response. He pressed Stapleton as to why there was such a long delay in responding to his resignation and dues revocation request, and told Stapleton that he had 2 days to process his resignation/revocation requests. Stapleton, not one to be easily intimidated, replied that "it will get done whenever it gets done; you want to be a loafer, get out; go be a loafer out in the streets." Brudy stood his ground, causing Stapleton to yell at Brudy to "get the fuck out of the office." At that point, Brudy got the message and left.⁶³

Brudy's August 21, 2015 encounter with Stapleton did not spur a response from Jeffries and Local 385 continues to deduct \$15 dues per week.⁶⁴

LEGAL ANALYSIS

LOCAL 385'S DUTY OF FAIR REPRESENTATION

The General Counsel and Charging Parties allege that Local 385 restrained and coerced employees and breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act in its handling of employee efforts to resign their union membership, revoke their dues check-off, and obtain information relative thereto. Local 385 denies the allegations, insisting that Jeffries responded to untimely requests by 6 of the Charging Parties to resign their union memberships and revoke their dues check-off authorizations. In the case of the other two Charging Parties, Local 385 contends that their timely received revocation letters were misplaced, but upon discovery of the errors, it acknowledged the errors and voluntarily reimbursed them.⁶⁵

⁶² I base this finding on Brudy's credible testimony, coupled with the unreturned follow-up calls to Jeffries, that he never received the July 27, 2015 letter, including a copy of his dues authorization form, or any other response from Local 385. (Tr. 169–171, 173–175, 177, 452–453; GC Exh. 65; R. Exh. 29.) Again, there was neither documentary proof of mailing nor corroborative testimony by a union employee that the letter was actually mailed in the regular course of business.

⁶³ Brudy and Stapleton conceded that the discussion got heated, but it is clear that Stapleton became angry when Brudy insisted on an immediate response and he yelled at him to get him to leave the office. I also credit Brudy's testimony that Stapleton called him a loafer, given Stapleton's pattern of also failing to respond to numerous voicemail requests by Brudy and other Charging Parties. (Tr. 171–172, 342–344, 349–350.)

⁶⁴ Given his general lack of credibility regarding the processing of revocation requests and his pattern of failing to respond to numerous voicemail messages from the Charging Parties, I do not credit Jeffries vague testimony that he followed up the Stapleton incident by leaving a voicemail for Brudy informing that Local 385 previously responded in writing and to contact Jeffries with any further issues. (Tr. 460.)

⁶⁵ The Charging Parties also contends that Local 385's restrictions on the ability of the Charging Parties to revoke their check-offs to an annual 10 or 15 day period also violates the duty of fair representation.

Section 7 of the Act guarantees the employees' rights to "join, or assist labor organizations . . . and . . . to refrain from . . . such activities." 29 U.S.C. § 157. Section 8(b)(1)(A) of the Act implements this protection by prohibiting unions from restraining or coercing employees in the exercise of Section 7 rights. 29 U.S.C. § 158(b)(1)(A). The duty of fair representation, which derives from a union's status under Section 9(a) of the Act (29 U.S.C. § 159(a)) as exclusive bargaining representative, requires a union "to represent all members fairly." *Marquez v. Screen Actors Guild*, 525 U.S. 33, 44 (1998) (citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953)). A union breaches this duty when its conduct toward a member is "arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

All of the parties signed or, in the case of Dolores Nicosia, are deemed to have signed dues check-off authorization forms. Check-off 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, are permitted under Section 302 of the Labor Management Relations Act (29 U.S.C. § 186). See *Lockheed Space Operations Co.*, 302 NLRB 322, 325, 328–329 (1991). Such authorizations are even lawful in "right-to-work" states, such as Florida, where provisions requiring the payment of union dues organization as a condition of employment would be unlawful under Section 14(b) of the Act. 29 U.S.C. § 164(b). See *Syscon Int'l, Inc.*, 322 NLRB 539, 539 fn. 1 (1996).

Accordingly, Local 385 was entitled to have Disney and UPS deduct dues from the Charging Parties' paychecks pursuant to the express authorization in their respective check-off cards. See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991). Moreover, that language also obliged the Charging Parties to pay dues even after they resigned their union membership, renewing automatically each year while the applicable collective-bargaining agreement remained in effect, unless and until they timely revoked their authorizations in writing. See *Frito-Lay, Inc.*, 243 NLRB 137, 138 (1979). Local 385's requirement that employees also notify the employer in writing was also lawful. See *Postal Service*, 302 NLRB 701, 702 (1991) (requiring the submission of a dues revocation form to the employer and, if the request was untimely, followed by the employer informing the employee of their authorization date). See also, *Boston Gas Co.*, 130 NLRB 1230 (1961) (upholding requirement employee seeking to revoke dues authorization must give written notice to both the employer and the union).

Hector Santana-Quintana submitted a timely written request to revoke his dues check-off authorization on May 20, 2014. However, Local 385 did not process or honor his request until after Santana-Quintana filed an unfair labor practice charge, claiming that it simply made a clerical error.

In addition, they contend that the Union's calculation of the dates in determining whether a notice of revocation is timely is arbitrary and not spelled out in the check-off forms. Those arguments on brief, however, were not pled. Moreover, current Board precedent permits the form of annual window period restrictions with respect to check-off authorizations at issue in this case.

Arlene Behrens submitted a timely written request to revoke her dues-checkoff authorization on October 31, 2014. She followed-up with several telephone calls to Local 385 and spoke with Howard on several occasions about her request to revoke. Jeffries ignored Behrens' letter and follow-up inquiries until she filed unfair labor practice charges in May 2015 and Jeffries was confronted by the Region 12 with proof of her revocation request.

Sharon Masuda sent four letters to Local 385 and made one visit to Local 385's offices seeking to revoke her dues check-off authorization well before her window of February 15 to February 25, 2015, but received no response from Local 385. Local 385's failure to provide information concerning Masuda's anniversary date caused her to miss her 2015 window. Only after she made a fifth written request, on February 19, 2016, did Local 385 honor Masuda's dues revocation request on February 25, 2016.

Heather Raleigh notified Local 385 by letter, dated November 13, 2014 of her request to limit her deductions to financial core dues. The letter was received well before the start of her window period for revocation on January 8, 2015. Raleigh also called and left telephone messages and visited Local 385's offices in December 2014, but Local 385 officials ignored those inquiries as well. In February 2015, after her window period closed, Raleigh mailed and hand-delivered two more letters to Local 385. Only then did she receive a response from Local 385. Although Raleigh's initial letter sought to pay financial core dues, it was clear from her telephone calls and visits to Local 385 that she was seeking to rescind her dues check-off authorization. Local 385's obstruction caused Raleigh to wait another year to resubmit her revocation, which Local 385 finally honored on January 29, 2016.

Mitchell Kent contacted Local 385 for information prior to his window period of March 31 through April 10, 2015. He was merely told to submit the request in writing and, as a result, his March 20, 2015 revocation request was premature. Kent received no response to his letter or telephone calls over the next 2 months. Kent followed up with another letter to Local 385 on April 18, 2016, resigning his union membership and revoking his dues check-off authorization. Jeffries finally responded on April 29, 2016, by supplying the date Kent signed the authorization form and the language setting forth the applicable window period, but it was too late. As a result of Local 385's obstructive behavior prior to March 31, 2015, dues continue to be deducted from Kent's paycheck.

Dolores Nicosia was a peculiar case. The check-off card on file bore the name of, and was signed by her daughter, Debra Nicosia. Debra Nicosia used Dolores' personal information at a time when Debra was 16 years old and probably not eligible for legal employment. While the check-off card did not bear Dolores Nicosia's name, equitable considerations suggest the absence of unclean hands on her part, thus negating her contention that she never agreed to any restrictions and should have been able to revoke her dues check-off authorization at any time. Dolores Nicosia facilitated or acquiesced to the hiring of her daughter by Disney at the age of 16 based, in part, on Dolores' identity, and then permitted Local 385 dues to be deducted from her paycheck over the next 12 years. Dolores Nic-

osia's actions amounted to an agreement to the terms and conditions of Local 385 membership. Those conditions included the need to comply with the window period requirement for revoking her membership. Nevertheless, Nicosia was still entitled to resign and revoke her dues check-off authorization. She sent one letter and made several telephone calls to Local 385 seeking to revoke the authorization and information about how to revoke her authorization prior to the anniversary window period of July 6 to 16, 2016. Nicosia received no response to her letter or telephone calls. As a result, Nicosia sent a premature revocation notice in late May 2016, which she considered effective on June 14, 2016. She followed up with more messages to Local 385, which were also ignored. Local 385's failure to respond to Nicosia's requests for information prevented her from submitting her timely revocation notice at the commencement of her window period on July 6, 2016.

Baringthon Brudy's 60 to 75 day window to revoke his dues authorization was June 21 through July 6 each year. However, he did not contact Local 385 about the revocation process until sometime in "early July" 2015. As such, there is insufficient evidence to establish that Local 385's subsequent indifference and obstruction caused Brudy to miss his revocation window period ending on July 6, 2015. However, Local 385 failure to respond to Brudy or provide him with the appropriate information in July and August 2015 did cause him to miss the next annual window period, which began on June 21, 2016. As a result, Local 385 dues continue to be deducted from his paycheck.

Prior to 2015, Jacob Greene received information from Local 385 regarding the process and timing for properly revoking his dues-checkoff authorization. However, he incorrectly calculated the dates of his anniversary window period by using business days. Greene sent a letter to Local 385 on May 18, 2015 seeking to revoke his dues check-off authorization prior to the date his window period opened in 2015, but Local 385 did not respond to his 2015 letter or provide him with a copy of his dues check-off authorization form. As a result Greene did not have the necessary information to submit a timely request to revoke his dues authorization during the period of June 15 to 30, 2015.

The Charging Parties made multiple attempts to resign, revoke their dues check-off authorizations and/or get the information necessary to submit timely revocations. Some of their requests were timely; some fell outside the annual revocation window period. However, Local 385, by Jeffries and other union employees, failed time and again to respond to their requests or, if they did respond, did so only after the employees' window periods closed or charges were filed. Under the facts and circumstances, Local 385 breached its duty of fair representation in violation of Section 8(b)(1)A) by such arbitrary, discriminatory and bad faith conduct. See *Vaca v. Sipes*, 386 U.S. at 190; *Postal Service*, 362 NLRB No. 103, slip op. at 2 (2015) (union has an obligation to provide employees with information regarding how to revoke their check-off even without an explicit request, as long as it is clear the employee desired the information), quoting *Local 307, National Postal Mail Handlers Union (Postal Service)*, 339 NLRB 93 (2003).

In addition, Local 385's practices, coupled with its exclusive

reliance on one person, Jeffries, who unavailable at Local 385's offices for extended periods of time, created a significant obstacle for the Charging Parties in their efforts to revoke their check-off authorizations. Numerous messages and inquires left for Jeffries and other union officials were systemically ignored and he failed to return copies of the Charging Parties at their request. Raleigh and Brudy went to see Jeffries in person at Local 385's offices. Jeffries told Raleigh that it would take a few days to investigate and then failed to get back to Raleigh. Brudy, on the other hand, was misled into believing that Jeffries would be in the office and was met by Local 385 President Stapleton, was unable to handle Brudy's request, except to take a message for Jeffries and then threw Brudy out of the office when the latter insisted on a response.

Local 385's practice in how it handled the Charging Parties' revocation requests constituted a separate violation of Section 8(b)(1)(A) because it made it virtually impossible for them to revoke their dues check-offs in a timely manner, since they were unaware of their anniversary dates and Local 385 ignored their resignation and revocation requests. See *Electrical Workers Local 66 (Houston Lighting & Power Co.)*, 262 NLRB 483, 486 (1982) (imposition of such additional hurdles or preconditions not stated in the check-off agreement and repeated frustrations of an employee's attempt to revoke his check-off authorization constituted a violation of Section 8(b)(1)(A).)

CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Local 385 and the Service Trades Council (collectively referred to as the Respondent) are labor organizations within the meaning of Section 2(5) of the Act.

2. Walt Disney Parks and Resorts US, Inc. d/b/a Walt Disney World Co. (Disney) and the United Parcel Service, Inc. (UPS) are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act by: (1) failing or refusing to promptly respond to member requests for revocation of union dues check-off authorizations, even when those requests are not made within the window period for revocation; (2) failing or refusing to promptly respond to member requests for resignation from union membership, requests for copies of members' dues check-off authorization cards, and requests for other information regarding the revocation of members' union dues check-off authorizations, without regard to whether those requests are made by mail, by telephone, in person, or by other means.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent will be ordered to honor the resignation from union membership requests and dues check-off authorization revocation requests of the Charging Parties and reimburse them for the union dues deducted from their wages and remitted to the Union for the time period dur-

ing which the Respondent failed to timely honor their dues check-off authorization revocation requests.

Accordingly, Local 385 should be required to pay interest owed to Santana-Quintana and Behrens based on the delay in receiving their dues refunds, from the dates of their respective timely revocation requests—May 20, 2014, and October 31, 2014, respectively—to the dates on which they received their dues refunds. The appropriate remedy for the remaining Charging Parties is to refund their dues as of the revocation window immediately following Local 385's obstructive conduct, with interest: Heather Raleigh—January 8, 2015; Sharon Masuda—February 15, 2015; Mitchell Kent—March 31, 2015; Dolores Nicosia—July 6, 2016; Jacob Greene—June 15, 2015; and Baringthon Brudy—June 21, 2016.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶⁶

ORDER

The Respondent, International Brotherhood of Teamsters, Local 385, Lake Buena Vista, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing or refusing to promptly respond to member requests for revocation of union dues check-off authorizations, even when those requests are not made within the window period for revocation.

(b) Failing or refusing to promptly respond to member requests for resignation from union membership, requests for copies of members' dues check-off authorization cards, and requests for other information regarding the revocation of members' union dues check-off authorizations, without regard to whether those requests are made by mail, by telephone, in person, or by other means.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Honor the resignation from union membership requests and dues check-off authorization revocation requests of Heather Raleigh, Sharon Masuda, Mitchell Kent, Jacob Greene, Baringthon Brudy and Dolores Nicosia, and reimburse them for the union dues deducted from their wages and remitted to Local 385 since January 8, 2015, February 15, 2015, March 31, 2015, June 15, 2015, June 21, 2016, and July 6, 2016, respectively, with interest.

(b) Pay interest for the time period during which Local 385 failed to timely honor the dues check-off authorization revocation requests of Hector Santana-Quintana (May 20, 2014, to September 22, 2014) and Arlene Behrens (November 2014, to May 2015).

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause

⁶⁶ 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.

shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, mail copies of the attached notice marked Appendix,⁶⁷ at its own expense, to all employee members in the bargaining units who were represented by the Respondent during their employ by Disney at Kissimmee, Florida, and UPS in Gainesville and Tampa, Florida at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at those job locations. The notices shall be mailed to the last known address of each of the employee members after being signed by the Respondent's authorized representative.

(e) Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by Disney and UPS, if willing, at all places or in the same manner as notices to employee members are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official of Respondent on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. March 22, 2017

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 on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to promptly respond to your re-

⁶⁷ 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."

quests for revocation of union dues check-off authorizations, even when those requests are not made within the window period for revocation.

WE WILL NOT fail or refuse to promptly respond to your requests for resignation from union membership, your requests for copies of your dues-checkoff authorization cards, and your requests for other information regarding the revocation of your union dues-checkoff authorizations, without regard to whether those requests are made by mail, by telephone, in person, or by other means.

WE WILL NOT fail or refuse to promptly honor your request to resign from union membership.

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

WE WILL honor the resignation from union membership requests and dues-checkoff authorization revocation requests of Heather Raleigh, Sharon Masuda, Mitchell Kent, Jacob Greene, Baringthon Brudy and Dolores Nicosia, and reimburse them for the union dues deducted from their wages and remitted to us since January 8, 2015, February 15, 2015, March 31, 2015, June 15, 2015, June 2016, and July 6, 2016, respectively, with interest.

WE WILL pay interest for the time period during which we failed to timely honor the dues check-off authorization revocation requests of Hector Santana-Quintana (May 20, 2014 to September 22, 2014) and Arlene Behrens (November 2014 to May 2015).

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 385

The Administrative Law Judge's decision can be found at www.nlr.gov/case/12-CB-136934 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.

