

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

and

Case 18-CB-202802

JULIO F. MAYEN, An Individual

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EXCEPTIONS TO THE NATIONAL LABOR RELATIONS BOARD  
ON BEHALF OF RESPONDENT TEAMSTERS LOCAL 200

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On June 6, 2018, Administrative Law Judge Charles J. Muhl issued a decision in this case. Respondent Teamsters Local 200 (“Union” or “Local 200”) files the following exceptions, which are concise because the record is predominantly a set of stipulated facts:

- 1. To the conclusion that Charging Party’s checkoff authorization did not survive his 6-week pause in employment and dues collection thereafter violated Sections 8(b)(1)(a) and (2) (ALJD at 5), as that conclusion is contrary to applicable law.**

*Grounds for Exception:*

Mayen’s authorization (Jt. Exh. 8) states that it will renew on a yearly basis, and there is no requirement in the authorization (which is between

Local 200 and Mayen; the employer is not a party) that Mayen retain his present employment. Mayen without pause did retain his Local 200 membership, unlike the employee in *Kroger Co.*, 334 NLRB 847 (2001), and continued utilizing his authorization to pay membership dues after his brief pause in employment.

The ALJ incorrectly applied a “clear and unmistakable waiver” requirement to this case, but that requirement is applicable only to situations involving resignation of membership. *IBEW Local 2088*, 302 NLRB 322, 328 (1991). This authorization, and Mayen’s actions after resigning and quickly regaining employment, regardless did indeed constitute clear and unmistakable waivers allowing continued checkoff of dues. The authorization remained valid and there was no violation of the Act.

**2. To the conclusion that the short length of Mayen’s employment severance is irrelevant (ALJD at 5), as that conclusion is contrary to the record and applicable law.**

*Grounds for Exception:*

Unlike the employee in *Kroger*, who left employment for almost six months, Mayen was gone for only six *weeks*. That was a short enough period that he retained his Local 200 membership without any issues and was reinserted into the bargaining unit without any notice to the Union from either the employer or Charging Party. There is nothing in Mayen’s

authorization stating that it would become void upon severing employment, and his short-lived absence meant that the parties to that agreement, he and the Union, simply resumed checkoff without any problem.

**3. To the conclusion that Mayen’s continued membership is irrelevant (ALJD at 5), as that conclusion is contrary to the record and applicable law.**

Grounds for Exception:

Unlike the employee in *Kroger*, who resigned his membership and sought to discontinue paying dues, the record shows only that Mayen retained his membership and was therefore willfully responsible for dues payments during the applicable period. The ALJ states “Mayen’s membership status has no bearing on the method he chooses to pay any dues.” That analysis was tied to the ALJ’s mistaken application of the “clear and unmistakable” waiver requirement, which is only pertinent to waiving statutory rights, not to regular contract interpretation. *IBEW Local 2088* at 328 (“Accordingly, we will construe language relating to a checkoff authorization’s irrevocability...as pertaining only to the method by which dues payments will be made *so long as dues payments are properly owing.*”) (emphasis in original).

Mayen remained a member, there is no evidence he sought to resign, and therefore the authorization is not subject to any increased scrutiny.

Because Charging Party's voluntary, continued payment obligation (membership retention) does not concern a statutory right (right to refrain from assisting a union), the Act gives the Board no avenue for construing authorization language in this case.

**4. To the conclusion that this case does not involve internal Union matters beyond the Board's purview (ALJD at 5), as that conclusion is contrary to the record and applicable law.**

Grounds for Exception:

Respondent made this issue clear in its Brief at page 4: "Charging Party owed to Local 200 everything that was paid via the checkoff authorization; the only dispute is the validity of that authorization, meaning this is a contract matter without a damages issue, not a Section 7 or 8 matter." Unlike the *Kroger* or *IBEW* cases, this is not a case of deducting dues from the wages of non-members. The record shows only that Mayen became and remained a member.

There is no right under the Act that Mayen seeks to uphold, and furthermore Mayen owes the dues regardless of payment method. This case is an overreaching attempt to inject the Board into a contract matter between Local 200 and its member. The alleged conduct had no effect on Charging Party's employment nor his membership, and so the Board is left prosecuting a case about how Mayen paid to the Union money he voluntarily admits to

owing the Union.

- 5. To the conclusion that the Complaint is not barred by 10(b) (ALJD at 5-6), as that conclusion is contrary to the record and applicable law.**

Grounds for Exception:

Respondent's argument on this point is clear, but former Chairman Hurtgen was clearer still: "*Kroger* was wrongly decided." *Allied Production Workers Union Local 12 (Northern Engraving Corp.)*, 337 NLRB No. 6 at 20 (2001). The ALJ here properly recognizes his duty to apply what he believes *Kroger* holds, but that case is drastically different to these facts and should be overruled to the extent it failed to properly apply 10(b). The *Kroger* holding allowed "separate violation[s] of the Act" for deductions long after expiration of the 10(b) period. There is no provision in the Act for such a timeliness claw-back.

Chairman Hurtgen believed the Board-sanctioned effort in *Kroger* was wrong, and his analysis in the *Allied Production* case is applicable here. Mayen "did not sign a new checkoff authorization. However, the employer and the union, in reliance upon the prior authorization, began the checkoff deduction of dues." *Id.* Mayen therefore had unequivocal notice of the allegedly unlawful act, "trigger[ing] the 10(b) period." *Id.* Because that notice took place years before the applicable charge filing, that should be the end of

this case.

If a terminated employee argued that each new day of remaining unemployed renewed their 10(b) filing period, the result would be laughter; here, the argument found false traction and should be dismissed. The Act is not amorphous: “[N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge.” See *Simon v. Kroger Co.*, 743 F.2d 1544, 1546 (11th Cir.1984), cert. denied, 471 U.S. 1075, (1985) (“We find that the intent, spirit, and plain language of section 10(b) require that a complaint be both filed and served within the six month limitations period.”). Ponce de León did not find the fountain of youth, and neither can the General Counsel find the miracle cure for the age of the allegations here.

**6. To the conclusion that the Complaint is not barred by the doctrine of waiver (ALJD at 6), as that conclusion is contrary to the record and applicable law.**

*Grounds for Exception:*

The ALJ states that even though “Mayen allowed dues deductions to resume upon his reemployment to pay his membership dues,” there was no waiver because “each occurrence of unlawful dues deduction is a separate violation of the Act.” (ALJD at 6) First, that argument is mistaken for the reasons cited above at Exception 5. Second, Mayen intentionally relinquished

his right to challenge the authorization's validity when he utilized that selfsame document to continue paying his membership dues. That was a choice Mayen made, along with his choice to retain Unon membership. If Mayen did not intend to waive whatever right exists to void a checkoff authorization during an employment pause, he would have sought to make dues payments by some other method; he did not, and his choice was a strong and clear waiver.

- 7. To the conclusion that Respondent should have known that Mayen resigned and was quickly rehired, and therefore remains liable for unlawful deductions (ALJD at 6), as that conclusion is contrary to the record and applicable law.**

Grounds for Exception:

There is no evidence that Local 200 was contemporaneously aware Mayen paused his employment and was instantaneously rehired. There is also no evidence that the Union received dues from Mayen during the pause, only that Mayen utilized the authorization to make required payments thereafter and for nearly two more years. The ALJ's decision places an onus on Respondent to track all employer hiring decisions, yet placed no onus on Charging Party to timely file a charge; both directives are mistakes.

- 8. To the conclusion that "If the complaint were dismissed on non-**

**effectuation grounds, dues checkoff would be rendered compulsory for Mayen during the applicable time period.” (ALJD at 6), as that conclusion is contrary to the record and applicable law.**

*Grounds for Exception:*

First, dues payments were compulsory for Mayen, and there is no contrary contention by Mayen, the General Counsel, or the ALJ. The only basis for the ALJ’s conclusion regarding compulsoriness is that the mode of paying dues should not have been compulsory – but why does the Act care? Mayen was a member, not a paying non-member as in the above-cited cases. Charging Party’s “compulsory” payments came only insofar as he remained signatory to the authorization, which was revocable based upon its terms during the “applicable time” referenced by the ALJ. Mayen failed to pen a revocation, much like he failed to timely pen a charge, and so dismissal for non-effectuation is perfectly applicable.

**9. To the ruling that Respondent violated the Act (ALJD at 7; Conclusion of Law No. 3), as that conclusion is contrary to the record and applicable law.**

*Grounds for Exception:*

For the reasons cited in the Exceptions above, Respondent did not violate the Act.

**10. To the conclusion that certain remedies should be ordered (ALJD at 7), as that conclusion is contrary to the record and applicable law.**

*Grounds for Exception:*

For the reasons cited in the Exceptions above, no remedy should be ordered here save dismissal of the Complaint in whole.

**11. To the recommended order and Appendix (ALJD 7-10), as such findings are contrary to the record and applicable law.**

*Grounds for Exception:*

For the reasons cited in the Exceptions above, there should be no order in this matter save dismissal of the Complaint in whole.

Respondent respectfully requests that the Board dismiss the complaint in whole.

Dated this 22<sup>nd</sup> day of June 2018.

Respectfully submitted,

/s/ Kyle A. McCoy  
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AFFIDAVIT OF SERVICE for Case 18-CB-202802

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I hereby certify that on June 22, 2018, I caused a copy of the foregoing document to be electronically served upon the following:

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