

In The Matter of:

Case No: 07-CB-221096

LOCAL 600, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(UAW), AFL-CIO

Respondent

And

LLOYD STONER, an Individual

Charging Party

RESPONDENT LOCAL 600 PROPOSED FINDINGS OF FACT AND LAW

I. Introduction

The Charging Party has alleged that Local 600 for approximately 2 months willfully and intentionally failed and refused to process his dues check-off revocation and accept his membership resignation. The Charging Party further alleges that the approximate 2 month delay in finalizing his dues check-off revocation and accept his membership resignation constituted a refusal to represent the Charging Party in a fair and impartial manner.

This case is unique since it represents an attempt by the Charging Party to require immediate compliance of a dues check -off revocation without examining the conduct of the Local or Company as to their actions being in good faith or whether or not it is a delay caused by administrative oversight or mere negligence.

In other words, the CP has demanded that the Administrative Law Judge ignore extenuating circumstances and apply a doctrine that also ignores consideration of the totality of circumstances involving these events.

It is further worth noting that the sections of the Act cited by the Charging Party require willful or intentional acts that restrict restrain and otherwise utilize coercion against the CP during the dues check-off process.

In the Argument portion of this Brief, Local 600 will reference the testimony of Mr. DePaoli that describes a clear and defined process that exist at Local 600 upon receipt of a dues check-off revocation request and or membership revocation. Testimony provided by Mr. DePaoli did establish a clearly defined process that was utilized and up until that point in time, it functioned without error.

In other words, the record is clear and concise that upon receipt of the dues check-off revocation letter received from the Charging Party, Local 600 acting through Mark DePaoli the Financial Secretary made an entry into the computer acknowledging the receipt of the resignation and revocation of the dues check-off.

It is also worth noting that the dues check-off revocation and membership and revocation letter prepared and sent by the Charging Party was addressed to Ford Motor Company as well as Local 600 (see General Counsel Exhibit 3). The Administrative Law Judge must take note of the

fact that Ford controls the payroll and the deduction process, the CP failed to explain why the Company is not solely responsible for the delay. Testimony by Mark DePaoli pages 61, 62, 63 (see exhibits G & H)

II. ARGUMENT

The factual argument on behalf of Local 600 required reiteration of facts and timelines unhindered by the constant interruption of an objection on the same grounds by the CP Counsel.

The CP's position is obvious he urges the ALJ to ignore the good faith actions of Local 600 in the check-off revocation process and demands that essentially a delay of 1 day constitutes a violation of the Act.

Local 600 submits that absent of finding of fact that Local 600 created obstacles to restrain the Dues Check-off revocation of the CP, this charge must be dismissed. Furthermore, absent a finding of fact that Local 600 coerced the CP and prevented the CP in any way from processing the Dues Check-off revocation the Charges should and must be dismissed. There is no other explanation that can be argued by the Charging Party, the record is clear, there is no testimony whatsoever that demonstrates intent to coerce or restrain CP. Nor is there any evidence that Local 600 failed to provide fair representation to the Charging Party.

Indeed, in this dispute similar to any other dispute there are extenuating circumstances that require a review of the totality of the conduct of the responding party, in this case Local 600.

The testimony and documents presented by Local 600, notwithstanding the often-interrupted testimony of Mr. DePaoli, explains in detail not only the chain of events, but most importantly the reasons for the delay in the final processing of CP's dues check-off revocation request.

Mr. DePaoli testified that Mr. Stoner emailed Second Vice President Freer requesting a copy of his dues check-off authorization card on February 19. (see Time Line)

Mr. DePaoli promptly emailed Ford Rouge site wide HR Personnel requesting the dues check-off sheet.

During the period between 2-19-18 and 3-5-18 Mr. DePaoli he had at least 3 conversations and as many as 4 regarding the dues authorization card. Mr. DePaoli assured him that he was continuing his request and as soon as he received the same it would be forwarded on to him.

Mr. DePaoli testified that Mr. Stoner called back on at least 2 occasions to check out the status. Mr. DePaoli further testified that on March 1, he obtained a copy of Mr. Stoner's dues check-off authorization card and emailed it to him.

However, there must have been some breakdown in the process because Mr. Stoner called Mr. DePaoli and said he didn't receive it. While having a subsequent phone conversation with Mr. Stoner, Mr. DePaoli sent out to the CP the document that he had requested and the CP acknowledged that he received the same.

Mr. DePaoli further testified that on March 12, 2018 he received a letter from Mr. Stoner that he was terminating his membership, he was opting out of the Union, and that he was requesting a dues check-off revocation.

Mr. DePaoli on the very same day made a computer entry on March 12, 2018 at 4:03 p.m. that identified the dues check-off revocation process had begun and the Local 600 Secretary was to prepare a letter on Union letterhead notifying Ford Motor Company to cease deducting dues from the CP's paycheck. (see transcript pages 61,62,63 and Exhibits G & H)

Local 600 references phone conversations between Mr. DePaoli and the CP to demonstrate clearly and convincingly the open line of communication between Local 600 through Mr. DePaoli, and the Charging Party. Indeed, the only conclusion the ALJ can draw from the testimony from Mr. Stoner as well as Mr. DePaoli is that this open line of communication completely establishes that at no time did Local 600 restrain, restrict or coerce Mr. Stoner in any way as he processed his dues check-off revocation.

In fact, quite to the contrary, the allegations of the CP fall miserably short of establishing a pattern of behavior on the part of Local 600 to willfully ignore his request and to restrict, restrain or coerce or to hinder his ability to exercise his rights under the Act.

It is further worth mentioning, that notwithstanding the open and easy access CP Stoner had to Local 600, through email and phone conversations, he never called, nor did he correspond during the 2 months where dues continued to be taken out of his check by Ford Motor Company to inquire as to the status of the dues check-off revocation request.

It is clear that if CP had dues being taken out of his payroll, and the very first time it occurred, this issue could have been resolved immediately with a phone call or email to Mark

DePaoli, one can only ponder as to the motivation of Mr. Stoner and not calling at that time with the same intensity that he checked in over the delay in his actual dues check-off form request.

In order to make it easier for the ALJ and as a summary of the events that took place and as referenced in the transcript, attached is a Timeline of Events labelled as Exhibit A to this Brief. We submit an easy reference of the activities of Local 600 through Mr. DePaoli as a guide that is substantiated by Mr. DePaoli's testimony.

Mr. DePaoli further testified that on June 1, 2018 when he discovered that the dues revocation process has been stalled at the secretarial level of preparation of the letterhead notification to Ford Motor Company, he immediately sent a letter to Mr. Jenkins(see Mr. DePaoli testimony beginning on Page 67 and the introduction of Exhibits I & O) which also is the identical exhibit to General Counsel Exhibit 13

We also know that Mr. DePaoli testified (pages 69, 70 & 71) that he directed Local 600 payroll department to attempt to calculate the amount to of money that was owed to the CP and directed a check to him which was received in the amount to \$217.25 and cashed by Mr. Stoner. (see memo dated August 16, 2018)

Mr. DePaoli requested in a letter dated August 16, 2018 that the CP contact him with payroll records so he could bring him completely up to date because the records of Ford Motor Company were sometimes 2 and 3 months behind.

In the final analysis and review of the testimony submitted, Local 600 has responded to the Charge and appropriately explained its actions to account for approximately 2 months delay in the dues check-off process.

There has been no testimony, nor any exhibit whatsoever that references willful action by Local 600 to restrict and or restrain the dues check-off process initiated by the CP. The goal of Local 600 during the Hearing and in this Brief is to request that the ALJ examine the extenuating circumstances and the totality of events to determine if the Act has been violated. Therefore, for all the reasons set forth in the Hearing as well as in this brief, Local 600 submits that the CP has failed to establish any violation of the Act.

III. PROPOSED FINDINGS OF FACT AND LAW

PROPOSED FINDING OF FACT:

1. That the CP failed to establish that Local 600's actions constituted willful restraint and or coercion that resulted in approximately 2 months delay in his dues check-off request being activated.
2. That the CP failed to establish a violation of the duty of fair representation which is simply a bootstrap argument conditioned upon approving coercion and restraint referred to above. Accordingly, Charging Party has failed to establish that he was denied the duty of fair representation.

3. That Local 600 did process the CP request after a short delay and that Local 600 presented substantial extenuating circumstances that explain the delay for reasons other than those that violate the Act.
4. That the computer entry by Mr. DePaoli on March 16, 2018 demonstrates clearly and convincingly that but for the delay the letter should have immediately been sent to Ford Motor Company the next day, or a day or two after, and that would have notified Ford of the request. The final step in the dues check-off process required a computer-generated letter on Local 600 letterhead to Ford. This final step did not take place for approximately 2 months due to either administrative error or an administrative oversight.
5. That the ALJ should and must find that Ford Motor Company, controls payroll and the deductions from payroll, and documents that establish that Ford received the dues check-off termination notice shortly after March 12, 2018. Ford should have stopped the dues-check off for the CP immediately. There is nothing in this record that excuses Ford from the singular responsibility on the dues check-off revocation delay experienced by the CP.
6. That Local 600 requested from the Charging Party payroll records so they could properly complete the task of reimbursing the CP for dues that had been collected after the date of the dues check-off revocation. The CP refused,

failed and neglected to provide that information to Local 600, nor to notify the Union prior to the filing of the Charge that the dues were still being deducted from his payroll check.

7. The Constitution of the UAW supports that the dues were only improperly collected for the month of April, and May of 2018. The testimony of Mr. DePaoli explains that dues must be paid according to the Constitution and if the individual is employed for at least 40 hours in a month, dues must be paid for that month. The revocation notice did not come until March 16th therefore, the CP was not entitled to a dues reimbursement for the month of March, only for the months of April and May.

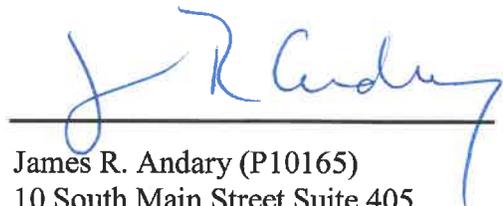
PROPOSED FINDING OF LAW:

- A. There is no case law that supports the proposition, that a delay in any form whatsoever in processing a dues check-off revocation constitutes a violation the Act. see Teamsters Local 696 (Great Western Unifreight), 209 NLRB 446 (1974)
- B. That any reasonable interpretation of the Act must include, extenuating or exceptional circumstances that may exist to explain a slight delay in the processing of the dues check-off revocation. Furthermore, a review of the Act must take into consideration the totality of conduct and circumstances the

Responding Party. Local 600 did not in any way restrict, restrain or coerce the process of the dues check-off revocation request made by the CP.

- C. That it has long been established that mere negligence or oversight in the duty of fair representation cases does not constitute a violation of the Act. See Teamster case cited above.
- D. The applicable law and interpretation of the Act requires that the ALJ make a finding that Local 600 did not intentionally restrain, and refuse the dues check-off revocation request by the CP.

Respectfully submitted,
ANDARY LAW GROUP,



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TIMELINE OF EVENTS

Feb 19th, 2018

- Mr. Stoner emailed 2nd V.P. Freer requesting a copy of his dues check-off authorization card. Mr. Freer then forwarded to Mr. DePaoli

Feb 21st

- Mr. DePaoli emailed Ford Rouge Site-wide HR Personnel requesting the dues check-off sheet.

Feb 19th – March 5th

- Mr. DePaoli had 3-4 phone conversations with Mr. Stoner regarding his dues authorization card, letting him know that the card belongs to Ford Motor Company, as they are responsible for the deductions. Mr. DePaoli told him he would try to obtain a copy. He called back a few times for an update.

March 1st

- Mr. DePaoli obtained a copy of Mr. Stoner's dues authorization card and emailed it to him.

March 5th

- Mr. Stoner called Mr. DePaoli to say he didn't receive the email, Mr. DePaoli then forwarded the email he sent him, using the same address, and he received it.

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March 12th

- Mr. DePaoli received a letter from Mr. Stoner requesting to opt out of the union.
- Mr. DePaoli typed a letter to the Dearborn Truck Plant HR Manager, to notify him of Mr. Stoner's request. At that time Mr. DePaoli had to send that letter to one of our secretaries for them to put it on our Local letterhead and send it back to me. Somewhere in that process, there was an oversight and it didn't get completed. Mr. DePaoli had forgotten about it until he saw the NLRB charge from Mr. Stoner, and at that time he looked through his files to see that he did not have a finished copy on our letterhead.

June 1st

- Mr. DePaoli received the NLRB charge from Mr. Stoner. To his surprise, after looking through his documents, he realized that he didn't have a completed copy of the letter to the HR Manager on our Local letterhead.
- Mr. DePaoli sent the original letter he had created on March 12th to one of the secretaries to print on Local letterhead.
- Mr. DePaoli sent a letter to Ron Jenkins, DTP HR Manager, notifying him of Mr. Stoner's request.

August 8th (on or about)

- After receiving a proposal from the NLRB Charge with an amount of dues owed, Mr. DePaoli had my bookkeeper run a report of dues that we showed deducted from Mr. Stoner from April to current time.

August 16th

- Mr. DePaoli had a memo prepared authorizing a check to be cut for Mr. Stoner's dues that we showed were deducted after opting out of the union.
- Mr. DePaoli drafted a letter to Mr. Stoner with an explanation of payment and method of a more expedient process for reimbursement, should any further dues be deducted.
- On or about August 20th, a check was mailed to Mr. Stoner totaling \$217.25 along with the explanation letter.

CERTIFICATE OF SERVICE

I certify that on the 13th day of February, 2019 I served copies of Respondent Local 600 Proposed Findings of Fact and Law on the following parties of record electronically:

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/s/ Kathleen Andary
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