

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

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

Respondent Local 600

Case 07-CB-221096

and

LLOYD STONER, an Individual

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

Counsel for the General Counsel Kelly Temple respectfully submits this brief to Administrative Law Judge Michael A. Rosas, who heard this case on January 7, 2019, in Detroit, Michigan.

I. ISSUES PRESENTED

- A. Whether Respondent restrained and coerced the Charging Party and breached its duty of fair representation in violation of Section 8(b)(1)(A) when it failed to acknowledge and process the Charging Party's union membership resignation and dues check-off authorization revocation.
- B. Whether Respondent caused or attempted to cause the Charging Party's employer, Ford Motor Company, (Employer Ford or Employer) to discriminate against the Charging Party with respect to retaining membership in the union in violation of Section 8(b)(2) of the Act.

Counsel for the General Counsel respectfully submits that the evidence establishes that Respondent violated the Act in these respects and in all other respects alleged in the Complaint.

II. PROPOSED FINDINGS OF FACTS

Respondent and Employer Ford are parties to a collective bargaining agreement (CBA) that is effective by its terms from November 23, 2015 to September 14, 2019 (GC 1(i) and (l); J 3)¹. Respondent represents employees employed by Employer Ford located at its Dearborn Truck Plant in Dearborn, Michigan. Respondent represents all full-time and regular part-time employees in the classifications described in Article 1 of the collective bargaining agreement between (CBA) Respondent and Employer Ford. (J 3) The CBA provides for the periodic withholding of union membership dues and initiation fees for employees who authorize such withholdings by Employer Ford, which remits said dues and fees to Respondent twice a month. (GC 1 (i) and (l), J 3)

The Charging Party has worked for the Employer for the past twenty-five years. (Tr. 19) For the last ten years, he has worked at the Dearborn Truck Plant in material handling (MP&L). (Tr. 19-20) On January 26, 1994, the Charging Party signed a dues check-off authorization form which reads in part:

I hereby assign to that Local Union of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), designated by the International Union to the Company, in writing, as having jurisdiction over the Unit where I am employed, from any wages earned or to be earned by me as your employee, or for any Regular Supplemental Unemployment Benefits to be paid to me, such amount as maybe in a fact, from time to time, during the effective period of this assignment and authorization, and due for me to the Union as my monthly membership dues in said Union, and (if owing by me) any initiation fee. I authorize and direct you where the Trustee of the Ford – UAW Supplemental Unemployment Benefit Plan Fund to deduct such amounts from my pay or from any Regular Supplemental Unemployment Benefits payable to me during each calendar month in accordance with arrangements as may be agreed to between the Company and the Union, and to remit the same to the above local union.

This assignment and authorization may be revoked by me only at the times and in the manner here after provided. I may revoke this assignment as of any anniversary date

¹ References to the record are abbreviated as follows: GC = General Counsel's Exhibit; R = Respondent's Exhibit; J= Joint Exhibit, Tr. = Transcript.

hereof by written notice, signed by me, of such revocation received by the Company by registered mail, return receipt requested, not more than twenty (20) days and not less than ten (10) days before any such anniversary date. I may also revoke this assignment by written notice signed by me of such revocation received by the Company by registered mail, return receipt requested, at any time when it is not in effect between the Company and the Union in agreement that the Company will check off membership dues in behalf of the Union.
(GC 2, J 3)

In February 2018², the Charging Party contacted Respondent's financial secretary Mark DePaoli to advise DePaoli of his decision to resign his union membership. (Tr 20) He reached out to DePaoli several times via telephone and left voicemail messages requesting a copy of his dues check-off authorization card. (Tr. 21) On March 5, DePaoli emailed to the Charging Party a copy of his dues check-off authorization. (Tr. 21, 57; R. E)

On March 9, the Charging Party sent separate letters, via certified mail with return receipt requested, to Respondent, Employer Ford, and the International Union stating that he was resigning his union membership and revoking his dues check off authorization. (Tr. 22, GC 3) He asked that the parties contact him, in writing, if they refused to accept his union membership resignation and dues checkoff revocation and to state the reasons for such refusal. (Tr. 22-24; GC 3). Respondent, Employer Ford, and the International Union received the Charging Party's letter on March 12, 2018. (Tr. 23-24; GC 4, 5, and 6) Notwithstanding receipt of such notification, Respondent failed to respond to the Charging Party and continued to accept union dues that Employer Ford continued to deduct from the Charging Party's paycheck for the months of March, April, May, and June. (TR 27-28; GC 8-12)³

During his testimony, DePaoli admitted that he received the Charging Party's letter on March 12 and asserted that he directed his assistant to draft a letter to Employer Ford, yet the letter was

² All dates referenced refer to 2018, unless otherwise noted.

³ On March 19, 2018, Employer Ford sent a letter to the Charging Party stating that since his revocation was not received within the time frame and in the manner specified in the CBA, the automatic dues check off would continue until the Charging Party complies with the requirements of Appendix A of the CBA. (GC 7)

never sent. In that regard, DePaoli testified that he signs his own letters and the Employer Ford letter was not presented to him for his signature. (Tr. 74) Therefore, DePaoli knew or should have known that the letter did not issue, yet DePaoli never followed up with, nor questioned his secretary as to whether a letter had been sent to Employer Ford. (Tr. 73-74)

On May 29, the Charging Party filed an unfair labor practice charge with the National Labor Relations Board. (GC 1(e)). On June 1, Respondent finally sent a letter to Employer Ford advising that the Charging Party had exercised his rights under Michigan Right to Work law and terminated his membership. (GC 13) It asked that Respondent Ford cease immediately from deducting union dues from the Charging Party's pay. (GC 13).

Despite Respondent's letter to Employer Ford, the Charging Party still did not receive any correspondence from Respondent. (Tr. 31-32) It was not until August 16 that Respondent's DePaoli finally sent the Charging Party a letter addressing the matter. (Tr. 32, GC 14) Instead of apologizing, trying to explain what happened, or repudiating the Respondent's actions, DePaoli shifted blame to the Charging Party, suggesting that the Charging Party should have contacted Respondent and that the "current process," that is to say, the course of action the Charging Party did take, takes much longer. DePaoli ended by stating if Employer Ford deducted any additional dues, the Charging Party could contact DePaoli for prompt reimbursement, "or you can continue to contact the NLRB and they will let me know." (GC 14) Respondent included a check for \$217.25 (GC 15), but as the Charging Party testified, it was not the entire amount owed to him by Respondent. (Tr. 32, GC 8-12) The amount of union dues deducted from the Charging Party's pay from March through June equal \$247.35. Therefore, the Union did not reimburse the full amount owed.

III. ANALYSIS

A. Respondent restrained and coerced the Charging Party and breached its duty of fair representation to him in violation of Section 8(b)(1)(A) when it failed to acknowledge and process his union membership resignation and his dues checkoff authorization revocation.

An employee's right to resign

It is well-settled that employees have an absolute right to resign their membership in a union at any time, and that any restrictions placed by a union on its members right to do so, including an unnecessary delay in processing the resignation request, is unlawful. *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985); *Auto Workers Local 73 (McDonnell Douglas)*, 282 NLRB 466 (1986).

In addition, a union's failure to acknowledge an employee's request for membership resignation is unlawful. *Affiliated Food Stores*, 303 NLRB 40, 45 (1991) (10-week delay in accepting employee resignations from union found unlawful). A check-off authorization is a contract between an employee and his or her employer whereby an employee assigns to his or her union a designated portion of future wages. See *International Brotherhood of Electrical Workers, Local No. 2088, AFL-CIO (Lockheed Space Operations Company, Inc.)*, 302 NLRB 322 (1991). That assignment can be conditioned on union membership. *Id.* An employee can also agree to pay union dues regardless of membership, but the authorization must contain clear and unmistakable language waiving the right to refrain from assisting a union. *Id.* Language in the authorization "clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that an employee has bound himself or herself to pay the dues even after resignation of membership." *Id.* at 329.

An employee's right to dues revocation

The rules governing revocation of dues check-off start with Section 302(c)(4) of the Act. Section 302(c)(4) states, in relevant part, that an employer may deduct and remit an employee's membership dues to a union upon a written authorization from the employee, "which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner[.]" The Board has interpreted Section 302(c)(4) to guarantee employees two distinct opportunities to revoke a dues check-off authorization: (1) at least once a year, and (2) upon termination of the collective bargaining agreement. *Atlanta Printing Specialties*, 215 NLRB 237, 237 (1974) (determining that union could not negate second of two distinct revocation opportunities by executing successor agreement prior to previous contract's termination date and claiming that revocation window at termination applied to the new agreement rather than the previous one), enforced, 523 F.2d 783 (5th Cir. 1975).

In the case at hand, the Charging Party resigned his membership *and* revoked his dues check-off authorization via letter that was received by Respondent on March 12, 2018. Respondent admits that it received the Charging Party's request to resign his membership and cease paying dues on March 12. Despite this, Respondent did not honor or process his request until after the instant unfair labor practice charge was filed, claiming that it simply made an administrative mistake. Upon receiving notification that an unfair labor practice charge had been filed with the NLRB, Respondent sent Employer Ford a letter on June 1 advising Employer Ford to cease dues deductions.

In resigning his union membership, the Charging Party's followed Respondent's procedure outlined in the UAW's By-laws. (Joint exhibits 2) Article 6 Section 17 of the By-

Laws provides that a member may resign or terminate membership by written communication only to the Financial Secretary of the Local Union and shall be effective upon receipt by the Financial Secretary. Respondent's financial secretary Mark DePaoli received notification the Charging Party's resignation on March 12. Consequently, the Charging Party's resignation was effective on March 12. In addition, the language in the dues checkoff authorization card was silent as to whether dues are tied to membership, so dues revocation is presumed to be effective upon request. *International Brotherhood of Electrical Workers, Local No. 2088, AFL-CIO (Lockheed Space Operations Company, Inc.)*, 302 NLRB 322 (1991). (Without explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership, employee authorization for dues deduction and remittance will be required to establish that the employee bound himself or herself to pay the dues even after resignation of membership.) Such language is not present in our case. Therefore, in his March 9 letter, the Charging Party effectively resigned his membership and revoked his dues check-off authorization card.

In *International Brotherhood of Teamsters, Local 385, (Walt Disney Parks and Resorts)*, 366 NLRB 306 (2018), the union's defense was that two of the charging parties' revocation letters were misplaced and upon discovering the error, the union acknowledged the error and reimbursed the parties. Despite this "error," the union violated Section 8(b)(1)(A) in its delay in processing the two charging party's valid revocation requests. By failing to timely process the Charging Party's requests to revoke his dues checkoff authorization card, Respondent restrained and coerced the Charging Party in the exercise of his Section 7 right to refrain from supporting Respondent. *International Brotherhood of Teamsters, Local 385 (Walt Disney Parks and Resorts)*, 366 NLRB at fn 4 (2018). Therefore, Respondent violated Section

8(b)(1)(A) when it continued to accept further dues from the Employer despite having received the Charging Party's valid resignation and revocation.

Respondent will likely argue that the Charging Party should have contacted it when he saw that Employer Ford was continuing to deduct his dues. This argument is unsupported in law. Moreover, Respondent's anticipated theory would seek to place a more onerous burden on a member to be able to resign his or her membership and revoke his or her dues check-off authorization. Under Respondent's assertion, once a member submits a valid resignation and revocation of his/her union membership and dues check-off authorization, that member must now undertake the additional task of monitoring whether the union actually complied with the request, and if not, to remind the union of its obligation to do so. Under Respondent's scenario, the member carries an onerous burden to resign his/her membership and is not rooted in established law. A union's failure to acknowledge an employee's request for membership resignation is unlawful. *Affiliated Food Stores*, 303 NLRB 40, 45 (1991), and *Local 58, IBEW*, 365 NLRB No. 30, at 4 (2017)(Union has no authority to unilaterally impose a restriction of dues checkoff).

B. Respondent has never repudiated its actions in accordance with *Passavant*.

Under *Passavant Memorial Hospital*, 237 NLRB 138, (1978), it is settled that under certain circumstances a charged party may relieve itself of liability for unlawful conduct by repudiating the conduct. To be effective, however, such repudiation must be "timely," "unambiguous," "specific in nature to the coercive conduct," and "free from other proscribed illegal conduct." *Douglas Division, The Scott & Fetzer Company*, 228 NLRB 1016 (1977), and cases cited therein at 1024. Furthermore, there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the charged party's part after

the publication. *Pope Maintenance Corporation*, 228 NLRB 326, 340 (1977). And, finally, the Board has pointed out that such repudiation or disavowal of coercive conduct should give assurances to employees that in the future the [charged party] will not interfere with the exercise of their Section 7 rights. See *Fashion Fair, Inc., et al.*, 159 NLRB 1435, 1444 (1966); *Harrah's Club*, 150 NLRB 1702, 1717 (1965).

Respondent will likely argue that the delay in processing the Charging Party's resignation was an administrative mistake and is nothing more than mere negligence, yet Respondent's inaction from June 1 onward is violative of its duty of fair representation. It was not until the Charging Party filed his unfair labor practice with the Regional office that the Respondent finally sent a letter to Ford notifying the company of his resignation, nearly three months later. At no point, even to this day, has Respondent repudiated its actions. As the Charging Party testified, Respondent has still not refunded the full amount of union dues owed.⁴ In addition, Respondent has not timely and unambiguously notified the Charging Party that it improperly failed to honor his resignation request and improperly accepted dues from the Employer following his resignation. Nor did Respondent assure the Charging Party that Respondent would not interfere with the exercise of his rights under Section 7 of the Act in the future. In fact, the August 16 letter Respondent sent attacked the Charging Party's handling of its failure to timely process his resignation and revocation. Respondent never provided a repudiation of its unlawful conduct sufficient under *Passavant* to relieve itself of liability for its unlawful conduct.

⁴ An informal Board settlement was reached in Case 07-CA-221045 with Employer Ford, just prior to the trial in this matter. Under the terms of the settlement, Employer Ford agreed to pay the outstanding \$30.10 plus interest owed to the Charging Party.

C. Respondent caused or attempted to cause Employer Ford to discriminate against the Charging Party with respect to retaining membership in the union in violation of Section 8(b)(2) of the Act.

Under Section 8(b)(2) of the Act, it is unlawful for a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act..." When Respondent failed to send a letter to the Employer advising of the Charging Party's effective membership resignation and dues revocation, it attempted to cause and caused Employer Ford to continue to deduct dues from the Charging Party's wages and remit those monies to Respondent notwithstanding the absence of an effective employee authorization for the deductions and remittances in violation of Section 8(b)(2) of the Act.

IV. CONCLUSIONS OF LAW

Counsel for the General Counsel respectfully submits that, for all the reasons set forth above, Respondent violated: (1) Section 8(b)(1)(A) of the Act as alleged in the Complaint by failing or refusing to promptly honor the Charging Party's request to resign his union membership and revoke his dues check-off authorizations; and (2) Section 8(b)(2) of the Act as alleged in the Complaint by attempting to cause and causing Employer Ford to continue to deduct dues from the Charging Party's wages and remit such dues to Respondent notwithstanding the absence of employee authorization for the deductions and remittances; and further, Counsel for the General Counsel respectfully requests that Your Honor so find and conclude that Respondent remedy its unfair labor practices as described above and in the attached Notice to Employees and Members, and recommend all other remedies deemed appropriate.

Dated at Detroit, Michigan this 14th day of February 2019.

/s/Kelly Temple
Kelly Temple- Counsel for the General Counsel
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226-2569

NOTICE TO MEMBERS AND EMPLOYEES

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.

SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT, A FEDERAL LAW, GIVES YOU THE RIGHT TO:

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

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL accept or acknowledge the effectiveness of employee Lloyd Stoner's resignation of Union membership since on or about March 12, 2018.

WE WILL make whole Lloyd Stoner for any monetary loss, with interest, in accordance with Board policy, that he may have suffered because of our acceptance of dues deducted and remitted to Local 600, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (Union) in the absence of an authorization for the deductions and remittance since on or about March 12, 2018.

WE WILL NOT refuse to accept or acknowledge the effectiveness of employee Lloyd Stoner's resignation of Union membership since on or about March 12, 2018.

WE WILL NOT accept dues deducted and remitted from employees' pay in the absence of an authorization for the deductions and remittances.

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

**Local 600, United Automobile, Aerospace and
Agricultural Implement Workers of America (UAW),
AFL-CIO**

(Labor Organization)

Date: _____ **By:** _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

Telephone:

Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

CERTIFICATE OF SERVICE

I certify that on the 14th day of February 2019, I served copies of the Counsel for the General Counsel's Brief to the Administrative Law Judge on the following parties of record electronically:

ALJ Michael A. Rosas
Email: Michael.Rosas@nlrb.gov

James R. Andary Esq.
Andary, Andary, Davis & Andary
10 South Main Street Suite 405
Mt. Clemens, MI 48043-7910
Email: jamesrandary@andarydavislaw.com

Bernie Rickie, President Local 600
Local 600, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO
10550 Dix Avenue
Dearborn, MI 48120
Email: afreer@uaw600.org

Alyssa K. Hazelwood, Staff Attorney
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road Suite 600
Springfield, VA 22160
Email: akh@nrtw.org

Glenn Taubman, Staff Attorney
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road Suite 600
Springfield, VA 22160
Email: gmt@nrtw.org

Lloyd Stoner
833 Loomis St
Jackson, MI 49202-3450
Email: mustangfast07@gmail.com

/s/ Kelly Temple
Kelly Temple