UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DALLAS AIRMOTIVE, INC.

and

Cases 16-CA-192780

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, AERONAUTICAL INDUSTRIAL DISTRICT LODGE 776

COUNSEL FOR THE GENERAL COUNSEL'S CROSS EXCEPTIONS AND BRIEF IN SUPPORT TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel files these Cross Exceptions and brief in support of said exceptions to Administrative Law Judge Sharon L. Steckler's ("Judge") January 25, 2019 Decision in the above-captioned case.

In her Decision, the Judge erred in finding that Dallas Airmotive, Inc. ("Respondent") did not violate the National Labor Relations Act ("the Act") when she found that the Union had waived the right to apply the terms of the parties' collective bargaining agreement to the employees at DFW Center. Based on her finding of waiver, the Judge found that Respondent had not violated Section 8(a)(5) by unilaterally changing discipline and discharge procedures, rules of conduct, job security, hours of work, shift schedules, reporting and call-back pay, temporary assignment, job selection and posting of positions, transfers and promotions, health and safety, and discontinuing union dues check off for employees at DFW Center (JD slip op. at 29). With respect to the Judge's

finding as to the dues deduction, Counsel for the General Counsel posits that Respondent violated Section 8(a)(5) by failing to remit dues prior to the expiration of the parties' collective bargaining agreement and *under extant law* that the violation continued after the expiration of the collective bargaining agreement. With respect to the latter, the General Counsel urges the Board to further adopt a new standard giving effect to the plain language of a dues checkoff agreement negotiated by the parties.

I. Statement of Exception

1. Counsel excepts to the Judge's finding that the Union waived its right to apply the parties collective bargaining agreement to the DFW Center facility (JD slip op. at 29).
2. Counsel excepts to the Judge's failure to find that Respondent violated Section 8(a)(5) by unilaterally changing the following terms: 1) job security; 2) rules of conduct; 3) discipline and discharge procedures; 4) seniority; 5) hours of work; 6) shift schedules; 7) reporting and callback pay; 8) temporary assignments; 9) job selection; 10) transfers; 11) promotions; 12) health and safety; 13) union dues checkoff; and 14) appointment, location and access of union representation (JD slip op. at 29).
3. The Judge's failure to find that Respondent was required to deduct and remit, pursuant to the relevant clause of the collective bargaining agreement, both before and after its expiration, dues to the Union (JD slip op. at 29).
4. Counsel for the General Counsel urges the Board to take this opportunity to adopt a standard for analyzing the terms of a dues checkoff agreement that allows the parties' plain language limiting the dues checkoff obligation to be respected. The General Counsel requests that the Board apply that standard in analyzing the Complaint allegation and remedial considerations regarding the deduction of dues.

II. Statement of the Case

The Complaint and Notice of Hearing in this matter, issued December 29, 2017 by the Regional Director for Region 16 of the National Labor Relations Board, alleged that Respondent violated Section 8(a)(5) by withdrawing recognition from the Union after its relocation and consolidation of operations to a new facility and that Respondent unilaterally changed conditions at the new facility. The Judge found that the Union had not waived its right to represent employees at the new facility, but that it had waived the right to apply the parties' CBA at the new facility, and that therefore, Respondent had not violated Section 8(a)(5) by unilaterally changing terms and conditions of employment for unit employees at that facility. The Judge also found that Respondent was not obligated to deduct dues from unit employees' paychecks.

III. Statement of Facts

In 2014, Respondent maintained three facilities in the DFW Metroplex located at Forest Park in Dallas, Texas (Forest Park), Dallas Love Field Airport (Love Field), and Heritage Park in Grapevine, Texas (Heritage Park). Respondent's DFW facilities repair and refurbish aircraft engines and each facility worked on different brands of engines (JD slip op. at 2, LL. 16-24). Of the DFW facilities, only the Forest Park location was unionized.

The Union represented employees at the Forest Park facility since 1966. The parties' most recent collective bargaining agreement was in effect from March 23, 2015 – March 23, 2018 (JD slip op. at 3, LL. 6-9). Under the CBA, Respondent recognized the Union with the same language that it had been using for that purpose since the Unit was certified in Case No. 16-RC-4105 in 1966: "all production and maintenance employees employed by the company at its facilities located 6114 Forest Park Road, Dallas, Texas." (Tr. 176, LL. 9-12; Jt. Exh. 28) Roughly 85% of

the Forest Park Unit employees had been dues paying members of the Union prior to its closure. (Tr. 193, LL. 5-8)

The Forest Park facility was located in a neighborhood that consisted of two hospitals and a residential area. In 2014, it became necessary to close the Forest Park location because it was no longer viable in the neighborhood due to noise and air pollution (JD slip op. at 3, LL. 15-20). Beginning in 2014, Respondent began transferring employees from Forest Park to its other DFW facilities (JD slip op. at 3, LL 20-22).

In 2014, Respondent expected to close the Forest Park facility within 2 years. At that time, Respondent was committed to transferring work from Forest Park to Heritage Park and Love Field (JD slip op. at 4, LL. 3-7). On January 14, 2014, Respondent met with the Union amidst rumors regarding the closure of the Forest Park facility. Respondent presented the Union with its plans for closing of the Forest Park facility and an opportunity for employees to apply for work at Respondent's other DFW locations. At this time, the number of employees moving from Forest Park to other locations was indefinite (JD slip op. at 4, LL. 9-32). At no time during these discussions was the Union informed that Respondent would be consolidating its work into one facility (JD slip op. at 5, LL. 8-10).

On February 18, 2014, the parties signed an agreement titled "Forest Park Closure Agreement" for the initial phase of the Forest Park closure. The Agreement gave priority to Forest Park employees applying for jobs elsewhere so long as they met specific hiring requirements and stated that the selection process for employees would be complete by June 2014. The Agreement also offered a voluntary separation plan and estimated 130 employees could be eligible to apply and the plans would be awarded by seniority (JD slip op. at 5, LL. 11-26).

On February 28, 2014, Respondent, via letter, notified the Union that approximately 90 Forest Park employees would be permanently laid off and offered voluntary separation or transfer to another facility (JD slip op. at 5, LL. 27-31). On March 7, 2014 Respondent, via letter, notified the Union of 3 more employees expected to be laid off. During this phase of the closure, approximately 10-15 employees obtained positions at Heritage Park and with layoffs and transfers, the number of employees at Forest Park dropped from 280 to approximately 190 (JD slip op. at 5, LL. 33-39).

In January 2015, Respondent began construction on a new facility located at DFW Airport (DFW Center). In March 2015, the parties began negotiations for a new collective bargaining agreement for the Forest Park employees. These negotiations also included discussion of the upcoming closure of the Forest Park facility (JD slip op. at 6, LL. 5-11). During these negotiations, Respondent notified the Union that a new facility was being built at the DFW Airport. Throughout negotiations, the Union requested to represent employees at the DFW Center, but Respondent denied these requests purportedly because employees would be transferred to "other areas" that were non-union (JD slip op. at 6, LL. 26-39). The Union asked if Forest Park employees would keep their jobs and Respondent provided that no one would be guaranteed a job and employees would have to apply and interview for positions at the other locations (JD slip op. at 6, LL. 41-44).

On March 3, 2015, the Union proposed changing the preamble of the CBA to incorporate employees at any future facilities within a 100 mile radius of the DFW center except Love Field and Heritage Park. Respondent denied this request because it was building a Rotorcraft facility and "Premier testing" was moving to the facility. Respondent asserted this language could be unlawful because Respondent was still "trying to figure things out" (JD slip op. at 6-7). During negotiations, Respondent represented that the Rotorcraft product lines and all testing work would

be the only work moved to DFW and although asked by the Union if work would be consolidated to the DFW center, Respondent continued to assert that it did not know what would happen. Based on Respondent's position, the Union expected much of the work to transfer to Love Field and Heritage Park because Respondent had spent millions renovating these locations (JD slip op. at 7, LL. 4-12). The parties continued to bargain over the successor collective bargaining agreement and the closure of the Forest Park facility through the spring of 2015. During these discussions, the parties never discussed consolidation of Respondent's facilities to the DFW Center nor the policies and procedures that would apply at the DFW Center (JD slip op. at 8-9).

On August 3, 2015, Respondent and the Union signed the Forest Park Closure Agreement. The Agreement provided that Forest Park employees would have to bid on their positions and provided that Forest Park employees would be given priority consideration for positions associated with work transferred to other facilities in the DFW Metroplex. The parties agreed that wages and compensation would follow the practice of the location where the work would move and benefits such as sick pay, holidays, and vacation would remain the same but be subject to the policies of the location where the work was moved. The Agreement also stated that all other policies, practices, and procedures at the location where the work was moved would apply. This agreement was in effect through the complete closure of the Forest Park facility (JD slip op. at 9, LL. 1-22). Respondent admitted that it did not know which facilities Forest Park employees would be relocated to when it negotiated this agreement (JD slip op. at 9, LL. 29-31).

At the DFW Center facility, Respondent failed to apply the terms of the collective bargaining agreement to Forest Park employees who were transferred to the DFW facility. (Tr. 149, LL. 2-12; Tr. 270, LL. 17-25; Tr. 271, LL. 1-25; Tr. 272, 1-25) Respondent failed to notify the Union about any changes to the terms and conditions of employment that it was applying to

employees at DFW Center (including job security, rules of conduct, discipline and discharge, seniority, hours of work, employee shift schedules, reporting and call-back pay, temporary assignments, job selection, transfers, promotions, health and safety, union dues checkoff and appointment location and Union access). (Tr. 65, LL 17-25; Tr. 66, LL 1-25; Tr. 67, LL.1-17; Tr. 68, LL. 8-13))

In 2017, as employees transferred to DFW Center, Respondent, without a request from any employees, unilaterally stopped deducting their dues. (Tr. 94, LL. 11-17; Tr. 194, LL 6-8). Respondent did not inform the Union of its decision to do so. The Union only learned that Respondent had ceased dues deduction was when it no longer received those dues. (Tr. 67, LL. 21-22).

IV. The Judge's Findings

The Judge properly rejected Respondent's argument that the closure agreements served to waive the Union's right to apply the terms of the collective bargaining agreement at the DFW Center (JD slip op. at 23-25). In her analysis, the Judge importantly noted that where Respondent had purposely avoided notifying the Union of its consolidation plan, it had "precluded meaningful bargaining about the effects of transferring all bargaining unit employees to a single location, DFW Center, instead of dispersing employees between Heritage Park and Love Field" (JD slip op. at 23, citing *Waymouth Farms, Inc*., 324 NLRB 960, 963 (1997), enf. in rel. part 172 F.3d 598, 600 (8th Cir. 2001)). The Judge factored this conduct into her finding that the Union had not waived the right to represent the employees at DFW Center.

However, despite Respondent's prevention of meaningful bargaining, the Judge found that the closure agreements did serve to waive the Union's right to assert the terms of the collective bargaining agreement at DFW Center (JD slip op. at 29). Specifically, the Judge found:

> Here, I agree that Respondent was within its rights to apply its terms and conditions of employment, already established at DFW Center, when the Forest Park bargaining unit relocated. The 2015 Closure Agreement was drafted with Lodge 776's consent and input. The documents reflect that the parties knew a number of contingencies, known and unknown, existed in 2015. The plain language of this agreement waives Lodge's 776's rights to apply the terms and conditions of the collective bargaining agreement. I therefore recommend dismissal of the unilateral change allegations. But see [*Comar, Inc*., 339 NLRB 903, 911 (2003), enfd. 111 Fed. Appx. 1 (D.C. Cir. 2004)] (respondent should not benefit from its unlawful conduct).

Id.

V. Argument

A. The Closure Agreements did not waive the Union's right to apply the CBA

A union's waiver must be "clear and unmistakable" as articulated by the Supreme Court in *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983). The evidence must show "that the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter." *Allison Corp.*, 330 NLRB 1363, 1365 (2000). See also, *Provena St. Joseph Medical Center,* 350 NLRB 808, 810-815 (2007), where the Board determined if the matter of the above work was not even mentioned during effects bargaining, then ipso facto it could not have been "fully discussed" and the Union could not have "consciously yielded its interest." Finally, an effective waiver must show that the bargaining partners unequivocally and specifically expressed their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply. Id. at 810.

Here, the Facility Closure Agreements do not waive all rights to negotiate over *all* terms and conditions of employment. In fact, the documents, which are the best evidence of what the documents mean, simply list the benefits that will be given to the bargaining unit employees once they arrive at a new facility. Although there is language that "all other policies, practice, and

procedures at the location where the work will move will apply," this language does not act as a true waiver because there is no evidence that other terms and conditions of employment were thoroughly discussed and that the Union waived these terms and conditions of employment. Indeed, Respondent submitted its bargaining notes, which show scant mention of the 2015 Facility Closure Agreement and the notes are silent about the alleged unilateral changes. In any event, there is no record evidence that the topics were even discussed, therefore, no waiver exists under *Provena.* Also, the waiver of a statutorily protected right will not be inferred from a general contract provision; it requires that either the contract language relied on be specific or an employer showing the issue was fully discussed and the union consciously yielded its interest in the matter. *Georgia Power Co.*, 325 NLRB 420, 420-421 (1998).

For these reasons, and because Respondent precluded meaningful bargaining, Counsel for the General Counsel urges that the Judge's finding as to waiver and the unilateral changes should be overturned.

The Judge generally applied the unilateral change doctrine's clear and unmistakable waiver standard when evaluating whether Respondent engaged in several unilateral changes but did not address dues check off specifically. As described below, the General Counsel believes that the Board should adopt a standard for dues checkoff that enforces the common meaning of the terms of the bargained-for agreement. Such an analysis of the plain meaning of the terms of the dues checkoff agreement here will establish that Respondent did violate Section 8(a)(5) of the Act when it ceased dues checkoff during the life of the collective bargaining agreement, but such a violation does not extend to the period after the expiration of the collective-bargaining agreement because the language of the agreement specifically linked Respondent's dues checkoff obligation to the duration of the agreement.

B. Under Extant Law, the Dues Deduction Violation Continued after Expiration of the Collective Bargaining Agreement

The 2015 Closure Agreement stated that all other policies, practices, and procedures at the location where the work will move will apply. The agreement makes no reference to the deduction of union dues from employees' paychecks. Under the terms of the CBA, Respondent was required to deduct dues as follows:

> During the life of this Agreement, the Company agrees to deduct from the pay of each Union member and remit to the Union "standard" monthly membership dues uniformly levied in accordance with the Constitution and By-Laws of the Union, provided such member of the Union voluntarily executes the agreed upon form, which is hereinafter included in this Agreement, to be known as "Authorization for Check-off of Union Dues," which shall be prepared and furnished by the Union…

(Jt. Exh. 28 at Article 6 (Check-Off of Union Dues), Section A., at 2). Accordingly, when Respondent agreed to the CBA effective March 23, 2015 to March 23, 2018, it agreed to continue to deduct union dues from unit employees' paychecks through the life of the agreement. This is not a policy, practice, or procedure, but rather a bona fide agreement between the parties to deduct union dues from bargaining unit employees' paychecks.

Under extant law, Respondent had a responsibility to continue to deduct dues from employees' paychecks after the expiration of the CBA in March 2018.

C. The Board Should Adopt Standards that Give Effect to the Plain Meaning of Language that the Dues Checkoff Obligation Will Be in Effect Only During the Term of the Agreement

While not arguing to disturb the rule set forth in *Lincoln Lutheran* that a dues checkoff obligation may continue after contract expiration,[1] the General Counsel believes that the Board should only find that the dues checkoff obligation continues post contract expiration where the

[1] Although the Board may decide to overturn *Lincoln Lutheran*, it is not necessary to do so if the Board establishes a contract interpretation standard for these kinds of provisions that allows employers to easily terminate checkoff at a contract's conclusion and enables employees to revoke their authorizations at any time after contract expiration.

language of the parties' agreement demonstrates that was their intent. The Board in *Lincoln Lutheran* acknowledged that parties may agree that, following contract expiration, an employer may unilaterally discontinue honoring a dues-checkoff arrangement established in the expired contract, notwithstanding the employer's statutory duty to maintain the status quo. 362 NLRB No. 188, slip op. at 9 fn. 28. This case provides an opportunity, since *Lincoln Lutheran* went into effect removing dues checkoff from the list of exceptions to the unilateral change doctrine, for the Board to adopt a standard for analyzing the language of dues checkoff provisions to determine when the parties have so agreed. The General Counsel believes that the standard for analyzing such language must account for the unique aspects of dues checkoff, and that a "clear and unmistakable waiver" standard is not appropriate for this particular type of term and condition of employment. A standard that gives effect to the plain meaning of the language of a dues checkoff provision will protect parties' interests and ultimately promote collective bargaining.

Furthermore, the General Counsel believes that the Board should also reconsider current law that restricts to a specific window period an employee's ability to revoke his or her authorization post-contract expiration. Therefore, the General Counsel urges the Board to also adopt a standard that allows employees to revoke their authorizations at contract expiration and any time there is no contract in effect.

i. The standard for analyzing the language of a dues checkoff agreement should give effect to the words as written

The General Counsel respectfully urges the Board to analyze the language of dues checkoff provisions so as to give effect to the plain words chosen by the parties, rather than applying the clear and unmistakable waiver standard. The Board should look at the language of the parties' dues checkoff provision in the parties CBA and determine whether they included language that in some way links the employer's obligation to checkoff dues to the term of the contract, e.g., "checkoff

will be utilized during the term of [or for the duration of] this agreement if employees execute an appropriate checkoff authorization."[2] On the other hand, in the absence of language specific to dues checkoff, a general durational clause in the contract should be insufficient, and dues checkoff should be maintained as status quo under the unilateral change doctrine. *See Honeywell Int'l, Inc. v. NLRB*, 253 F.3d 125, 131-32 (D.C. Cir. 2001) (general durational clause, without more, does not defeat unilateral change doctrine).

The Board's determination that Congress intended for the terms of a dues checkoff authorization to be enforced as written supports the adoption of a standard in which the contractual provision effectuating that authorization, i.e., the contractual dues checkoff provision, is also enforced as plainly written. In interpreting the employee's intent in signing a checkoff authorization, the Board gives effect to the specific language of the authorization, such as language designating certain window periods in which the employee may revoke his or her assignment. *See Frito-Lay, Inc.*, 243 NLRB 137, 139 (1979).

Relying on the meaning of the plain language adopted by the parties is consistent with the Board's view that disputes involving dues checkoff provisions and authorizations essentially involve contract interpretation. *See Kroger Co.*, 334 NLRB 847, 849 (2001). The language of a

[2] The Board has found that this kind of language does not meet the "clear and unequivocal waiver" standard regarding other kinds of mandatory subjects. *See*, e.g., *KBMS, Inc.*, 278 NLRB 826, 849 (1986) (language requiring contributions to be made "as long as a Producer is so obligated pursuant to said collective bargaining agreements" insufficient because language did not "deal with the termination of the employer's obligation to contribute to the funds"); *Schmidt-Tiago Construction Co.*, 286 NLRB 342, 366 (1987) (language requiring that employer contributions to pension fund be "in accordance with" a pension agreement did not specifically state that employer's obligation to contribute to pension fund ended at contract expiration); *Finley Hospital*, 362 NLRB No. 105 (contractual language stating that pay raises would apply "during the term" or "for the duration" of the agreement was not a waiver of the union's right to bargain about cessation of the raises after the agreement expired).

dues checkoff provision, and attendant dues authorization, should be enforced as written because the parties voluntarily agreed to it. And, because a contract's dues checkoff provision typically incorporates the language contained in the employee's dues authorization card, and often has similar language linking the employer's obligation to check off dues to the term of the contract, the Board should apply the same plain meaning standard to both checkoff agreements. Since the Board holds employees to the specific terms of their dues authorization window periods, the Board should similarly hold the employer and union to the terms they agreed to, including language that links the employer's checkoff obligation to the term of the contract.

Indeed, allowing contracting parties to rely on language evincing their intent to limit dues checkoff to contract duration will lead to greater industrial peace. An employer bargaining with a union will be incentivized to reach a final agreement, including on dues checkoff, without fear that it will have an indefinite obligation to finance the union's potential post-expiration labor dispute. *See Lincoln Lutheran*. 362 NLRB No. 188, slip op. 13-14 (Members Miscimarra and Johnson, dissenting) (noting that subjecting dues checkoff to the unilateral change doctrine would result in increased difficulties for parties trying to reach an agreement). In turn, there will be less incentive for employers to avoid all obligations to checkoff dues, and more employees and unions could therefore benefit from the administrative convenience of dues checkoff during the term of the contract.

ii. Special concerns distinguish dues checkoff from other mandatory subjects of bargaining

There are certain elements of dues checkoff that make it unique among mandatory subjects of bargaining subject to the Board's unilateral change doctrine. The General Counsel submits that these distinctions provide the basis for the Board to utilize a different analysis when determining

whether the parties have agreed that an employer's obligation to continue dues checkoff ends upon expiration of the contract.

Dues checkoff is exclusively a product of contract, unlike wages, hours, and other working conditions, and cannot exist in a bargaining relationship until the parties affirmatively contract to be so bound. *See Hacienda Resort Hotel & Casino*, 355 NLRB 742, 745 (2010) (Chairman Liebman and Member Pearce, concurring) (discussing the fact that wages, hours, and other mandatory subjects of bargaining can exist from the commencement of a bargaining relationship, but dues checkoff only begins with a contract). Dues checkoff also requires a second layer of contract between the employer and employee, in the form of a dues checkoff authorization signed by individual employees, to be lawful. 29 U.S.C. § 186(c)(4) (proviso in the Labor Management Relations Act that an employee must make a written assignment subject to certain restrictions on irrevocability before an employer is permitted to deduct dues); *Industrial Towel & Uniform Service*, 195 NLRB 1121 (1977), *enf. denied on other grounds* 473 F.2d 1258 (6th Cir. 1973).

Moreover, although dues checkoff is considered a "term and condition of employment," it is not the kind of term that directly affects employees' wages, benefits, and working conditions, but rather it has a more derivative effect on employment by facilitating employees' financial support of their bargaining representative. Thus, a waiver standard that insures that employees' direct terms and conditions of employment are generally continued in effect after contract expiration is not necessary with regard to dues checkoff.

Because of its implication of Section 7 rights, dues checkoff is also different from other deductions from employees' pay such as savings accounts, charitable contributions, or health insurance. Dues checkoff authorizations may be irrevocable for certain periods pursuant to their terms and the restrictions found in Section 302(c)(4) of the LMRA, and during those periods of

irrevocability, an employee is limited in his or her right to refrain from financially supporting any labor organization. Dues checkoff is therefore similar to the exclusions to the unilateral change doctrine that also implicate statutory rights, such as a no-strike provision, which waives employees' rights to engage in certain collective actions during the term of the contract, rather than to the other mandatory subjects of bargaining that are subject to the unilateral change doctrine, such as deductions from pay for other purposes.

In addition, because checkoff implements an employee's free choice to support or refrain from supporting a union, individual employees must consent to the arrangement, in addition to the employer and union, before checkoff takes effect. Principles of voluntariness are therefore uniquely important to dues checkoff, since individual employee consent is not similarly required to make other mandatory subjects of bargaining operational.

Finally, unlike other mandatory subjects of bargaining, discontinuation of dues checkoff is a legitimate economic weapon. Requiring an employer to continue checkoff post contract expiration would compel the employer to continue deducting dues, and thereby provide economic assistance to the union, at a time the employer is engaged in a bargaining dispute with that union. *See Hacienda II*, 351 NLRB at 506 (Chairman Battista, concurring) (noting that ceasing dues checkoff is a milder economic weapon than a lockout). Congress intended parties to have wide latitude in their negotiations and the Board is not the arbiter of the economic weapons that parties can use when seeking to gain acceptance of their bargaining demands, which ultimately lead to agreements and the furtherance of industrial peace. *NLRB v. Insurance Agents*, 361 U.S. 477, 488-89 (1970). The availability or discontinuance of checkoff as a potential economic weapon during a bargaining dispute should be left to the contracting parties, as demonstrated by contractual language establishing their intent to continue or discontinue checkoff after contract expiration.

iii. The Board should also reconsider employee revocation of checkoff authority post contract expiration

Although not specifically at issue in this case, the Board should also reconsider current law regarding employee revocation of checkoff authorization after contract expiration. The General Counsel believes that, in accordance with the language of Section 302(c)(4) of the LMRA requiring that dues checkoff authorizations must be revocable at least once per year or "beyond the termination of the applicable collective agreement," the Board should revise its policy with respect to checkoff authorizations that restrict an employee's ability to revoke his or her authorization post-contract expiration to a specific window period. Therefore, the General Counsel urges the Board to find unlawful any dues checkoff authorization language that restricts the statutory right of employees to revoke their authorizations at expiration of a current contract or during a period in which no collective-bargaining agreement is in effect. *See Frito-Lay, Inc*., 243 NLRB at 139-41 (Member Murphy, dissenting); *Stewart v. NLRB*, 851 F.3d 21, 32-35 (D.C. Cir. 2017) (J. Silberman, concurring/dissenting) (noting that "[t]he difference between a right to revoke during a limited pre-termination window and a right to revoke at will upon termination of an agreement is not an insignificant difference . . . Employees might well decide to revoke their authorizations . . . only after termination of an applicable agreement because of the then-existing unsatisfactory status of relations between the union and employer").

D. The Board Should Find that Respondent Lawfully Ceased Dues Checkoff at the Expiration of the Collective Bargaining Agreement Pursuant to the Terms of the Agreement

Applying a standard that appropriately analyzes the plain language of the dues checkoff agreement here, the General Counsel urges the Board to find that Respondent did violate the Act

when it terminated dues checkoff during the life of the agreement, but did not violate the Act after the agreement with the Union expired. The language of the parties' collective-bargaining agreement stated that "During the life of this Agreement, the Company agrees to deduct from the pay of each Union member and remit to the Union 'standard' monthly membership dues uniformly levied in accordance with the Constitution and By-Laws of the Union."

The language in the CBA specifically links Respondent's obligation to deduct union dues to the term of the agreement. This is not a general statement regarding the duration of Respondent's obligations under the contract, but one that specifically applies to Respondent's actions with respect to dues checkoff. The language was a product of negotiations between the parties, and the Board should give effect to that language and find that the agreement only obligated Respondent to maintain dues checkoff during the term of the agreement. Since the language of the agreement absolved Respondent of the requirement to maintain dues checkoff after the contract's expiration, the General Counsel respectfully recommends that the Board find that Respondent did violate Section 8(a)(5) of the Act when it ceased dues deductions during the life of the parties' collective bargaining agreement, but not after its collective-bargaining agreement with the Union expired.

VI. Conclusion

The General Counsel urges the Board to overturn the Judge with respect to her conclusions as to waiver, find that Respondent unlawfully changed conditions, but also take this opportunity to adopt a standard for analyzing the terms of a dues checkoff agreement that allows the parties' plain language limiting the dues checkoff obligation to be respected. The General Counsel requests that the Board apply that standard when analyzing this Complaint allegation. The General Counsel also requests any further relief the Board deems appropriate.

DATED at Fort Worth, Texas this 5th day of April 2019.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of General Counsel's Cross Exceptions to the Administrative Law Judge's Decision and Brief in Support was e-filed with the National Labor Relations Board and served via electronic mail on this 5th day of April 2019, on the following parties:

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