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Local 600, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and Lloyd Stoner. Case 07-CB-221096

August 28, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND EMANUEL

On February 21, 2019, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply. The Charging Party filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply.

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

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs¹ and has decided to affirm the judge's rulings,² findings,³ and

¹ The General Counsel filed a Motion to Reject the Respondent's exceptions numbers 9 and 10 and the Respondent's brief in support of exceptions, arguing that they do not comply with Sec. 102.46(a) of the Board's Rules and Regulations. We deny the motion because the Respondent's exceptions and brief substantially comply with the Board's requirements.

² The Respondent excepts to the judge's evidentiary rulings during its cross-examination of Charging Party Lloyd Stoner, which the Respondent asserts prevented it from questioning Stoner about his decision not to contact the Respondent after he learned that his employer, Ford Motor Company (Ford), was continuing to deduct dues following his resignation of union membership and revocation of his dues checkoff authorization. The judge, in fact, allowed the Respondent to question Stoner on this point, and he committed no abuse of discretion in his ruling disallowing further testimony.

³ The Respondent has implicitly 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.

⁴ We agree with the judge's finding, for the reasons set forth in his decision, that the Respondent's failure to promptly process Stoner's resignation of union membership and revocation of dues checkoff authorization coerced Stoner, and constituted a breach of its duty of fair representation, in violation of Sec. 8(b)(1)(A) of the Act. We reverse, however, the judge's finding that the Respondent violated Sec. 8(b)(2) of the Act by attempting to cause and causing Ford to continue to deduct dues from Stoner's wages and remit those monies to the Respondent. In order to prove a violation of Sec. 8(b)(2), the General Counsel must prove that

conclusions⁴ only to the extent consistent with this Decision and Order.⁵

ORDER

The National Labor Relations Board orders that the Respondent, Local 600, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, Dearborn, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to honor the request of employees to resign from membership in the Respondent and to revoke their dues checkoff authorization.

(b) 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) To the extent it has not already done so, if any, honor the request of Lloyd Stoner to resign from membership in the Respondent and to revoke his dues checkoff authorization.

(b) Reimburse Lloyd Stoner for the dues deducted from his wages and remitted to the Respondent since March 12, 2018, with interest, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

the union engaged in an affirmative act to cause the employer to continue to deduct dues from an employee post-resignation. See, e.g., *SSA Pacific, Inc.*, 366 NLRB No. 51, slip op. at 17 (2018); *Operating Engineers Local 12 (Kiewit Industrial)*, 337 NLRB 544, 545 (2002); *Food & Commercial Workers Local 540 (Campbell Soup)*, 305 NLRB 927, 930 (1991); *Woodworkers (Weyerhaeuser Co.)*, 304 NLRB 100, 101 (1991). We find no evidence of an affirmative act by the Respondent here. The judge's finding that the Respondent's "inaction" caused Ford's conduct is insufficient to establish a violation of Sec. 8(b)(2) of the Act. In this connection, we note that the Charging Party sent his resignation and revocation notice to both the Respondent and the employer and, under the terms of the applicable collective-bargaining agreement and checkoff authorization, no action was required by the Respondent for the employer to act on the revocation.

⁵ We shall 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).

The Charging Party argues that the Respondent's notice-posting obligation should extend beyond the Respondent's facility involved in this proceeding and encompass all individuals subject to its dues requirements. The Board's standard remedy is to order a notice to be posted at the location where the unfair labor practices took place. See *Rose-Terminix Exterminator Co.*, 315 NLRB 1283, 1289 (1995). We accordingly deny the Charging Party's request. We also deny the Charging Party's additional request that the Respondent should be required to post notices on all union-controlled bulletin boards at Ford's Miller Road truck plant in Dearborn, Michigan, where Charging Party Stoner is employed.

(c) 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.

(d) Within 14 days after service by the Region, post at its Dearborn, Michigan facility copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, 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 Respondent to ensure that the notice is 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 Ford Motor Company at its Miller Road truck plant in Dearborn, Michigan, since March 12, 2018.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 7 signed copies of the notice in sufficient number for posting by Ford Motor Company at its Miller Road truck plant in Dearborn, Michigan, if it wishes, in all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 7 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.

Dated, Washington, D.C. August 28, 2019

John F. Ring, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 and refuse to honor your request to resign your union membership and to revoke your dues checkoff authorization.

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 request of Lloyd Stoner to resign from membership and to revoke his dues checkoff authorization.

WE WILL reimburse Lloyd Stoner for the dues deducted from his wages and remitted to us since March 12, 2018, with interest.

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

The Board's decision can be found at www.nlr.gov/case/07-CB-221096 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor

⁶ 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."

Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Kelly A. Temple, Esq., for the General Counsel.
James R. Andary, Esq. (Andary Law Group), of Mt. Clemens, Michigan, for the Respondent.
Glenn M. Taubman and Alyssa Hazelwood, Esqs. (National Right to Work Legal Defense Foundation), of Springfield, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Detroit, Michigan, on January 7, 2019. The Charging Party, Lloyd Stoner, alleges that Local 600, United Automobile Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Local 600 or Respondent) violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act (the Act)¹ on March 12, 2018,² by: (1) unfairly and arbitrarily failing and refusing to represent Stoner; and (2) attempting to cause and causing Ford Motor Company (Ford) to continue to deduct dues from Stoner’s wages and remit those monies to Local 600 notwithstanding the absence of an employee authorization for the deductions and remittances.³ Local 600 denies the allegations and asserts that the approximate 2-month delay in finalizing Stoner’s dues check-off revocation and accepting his membership resignation did not establish a refusal to represent Stoner in a fair and impartial manner. Local 600 asserts that administrative oversight or mere negligence, and not a lack of good faith, caused the delay.

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

FINDINGS OF FACT

I. JURISDICTION

Ford, a corporation, is engaged in the manufacture, nonretail sale, and distribution of automobiles and other automotive products at its facility in Dearborn, Michigan, from where it annually

sells, and ships goods valued more than \$50,000 directly to points outside the State of Michigan. Accordingly, I find that Ford is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and Local 600 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Ford-Local 600 CBA*

Local 600 represents and services approximately 47 bargaining units in Michigan. The following employees employed by Ford at its truck plant located at 3001 Miller Road in Dearborn, Michigan, are exclusively represented by Local 600 pursuant to Section 9(a) of the Act and constitute one of those units, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by [Ford] in the classifications described in Article 1, of the current collective-bargaining agreement between the [Ford] and the International Union.

Ford’s recognition of Local 600 as the exclusive collective-bargaining representative of the unit has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 23, 2015, to September 14, 2019. In pertinent part, Article 3 of the CBA provides for the periodic withholding of union membership dues and initiation fees for employees who authorize such withholdings by Ford and provides for the twice-monthly remittance of those monies to Local 600. During the term of the CBA, Ford has fulfilled its obligations under Article 3 by withholding union membership dues and initiation fees from unit employees’ wages and remitted them to Local 600.

A unit employee may resign membership from Local 600 by sending a signed letter to its financial secretary, Mark DePaoli. Upon receipt of such a letter, DePaoli customarily sent a letter notifying Ford’s human resources manager at the Dearborn facility to cease deducting dues from the employee’s wages.⁴

B. *Stoner’s Membership in Local 600*

Stoner, a materials handler, began his employment with Ford on or about January 26, 1994. At that time, he also joined Local 600 and executed a dues check-off authorization form directing Ford to deduct membership dues from his wages and remit them to the Union:

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

from [a] check off obligation.” (Jt. Exh. 1). In addition, Appendix A of the CBA states that an employee may only revoke dues check-off authorization during a specified window at the anniversary of the employee’s dues checkoff authorization. (Jt. Exh. 3.) However, it is undisputed that these time restrictions were not applied during the relevant period, presumably because of Michigan’s right-to-work law. (Tr. 49, 59–60.)

¹ 29 U.S.C. §§ 151–169.

² All dates are in 2018 unless otherwise indicated.

³ The complaint allegations in Case 07–CA–221045 against Ford Motor Company were severed from Case 07–CA–221096 and Case 07–CA–221045 was withdrawn on January 7, 2019.

⁴ Local 600’s bylaws state that “resignation or termination of [union] membership shall not relieve [a member from the obligations arising

Supplemental Unemployment Benefits to be paid to me, such amount as may be in effect, from time to time, during the effective period of this assignment and authorization, and due from 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 or 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 hereinafter provided. I may revoke this assignment as of any anniversary date 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 there is not in effect between the Company and the Union an agreement that the Company will check off membership dues on behalf of the Union.

In February, Stoner decided to resign from Local 600. As a prelude to resignation, he left several voicemail messages for DePaoli requesting a copy of his dues check-off authorization card. DePaoli returned Stoner's call around the end of February or beginning of March. On March 5, DePaoli emailed Stoner a copy of his dues check-off authorization card.

C. Stoner Resigns from Local 600 and Revokes Dues Authorization

On March 9, Stoner notified Ford and Local 600 by certified mail, return receipt requested, that he was resigning from the Union, "effective immediately" and revoking his dues check-off authorization. In his letter, Stoner stated in pertinent part:

Since I have resigned my membership in the union, you must immediately cease enforcing the dues check-off authorization agreement that I signed. That check-off authorization is hereby revoked. I signed that check-off authorization solely in conjunction with, and in contemplation of, my becoming a member of the union; and, as such, it is no longer valid.

Stoner also requested that the parties promptly inform him in writing if they refused to accept his union membership resignation and dues check-off revocation and to state the reasons for such refusal.

DePaoli received Stoner's letter on March 12 but did not respond in writing to Stoner. In instances where employees sought to revoke their dues authorizations, he customarily drafted an instructive letter to Ford's human resources manager to cease

deducting union dues from Stoner's paycheck and forwarded it to his assistant for printing on letterhead. In this case, however, DePaoli drafted a letter but did not email it to his assistant for printing. Nor did he otherwise notify Ford about Stoner's resignation and revocation.⁵

On March 19, Ford sent a letter to Stoner stating that because 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 Stoner complied with the requirements of Appendix A of the CBA. Subsequently, on March 26 and continuing into June, Ford continued to deduct money from Stoner's wages and remitted those funds to Local 600 notwithstanding the lack of an employee authorization for the deductions and remittance. Local 600 continued accepting the dues that Ford continued deducting from Stoner's paycheck for the remainder of March, all of April and May and part of June.

On May 29, Stoner filed an unfair labor practice charge with the National Labor Relations Board (the Board). On June 1, Local 600 notified Ford in writing that Stoner exercised his rights under Michigan's Right to Work law and terminated his membership. It directed Ford to immediately cease deducting union dues from Stoner's pay. Despite Local 600's letter to Ford, Stoner still did not receive any correspondence from Local 600.⁶

After the filing of the unfair labor practice charge, dues continued to be deducted from Stoner's paychecks on June 4 and 8 and accepted by Local 600. At some point after June 8, Local 600 ceased accepting dues deducted from Stoner's wages, but continued to retain the amounts previously deducted and accepted from his wages.⁷

On August 16, in response to the unfair labor practice charges, DePaoli finally provided Stoner with an explanation for the delay in processing his resignation:

Based on your recent charges filed through the NLRB, it appears that Ford Motor Company is still deducting union dues from your wages. Unfortunately, we have to wait for the company to send us a report of all the dues deducted each month, and currently we only have records through June. If you had contacted me, as you did so many times in the past when you wanted a copy of your dues check off authorization card, I could've resolved the issue just by getting copies of your check stubs that show the amount of dues deducted, and I could've reimbursed you within a week. This current process takes much longer. Here is what our records show and what I am authorized to reimburse at this time: April - \$75.25 May - \$75.25 June - \$66.75 TOTAL - \$217.25 Should Ford Motor Company deduct any further dues, you can contact me for prompt reimbursement, or you can continue to contact the NLRB and they will let me know.

A check for \$217.25, the amount referenced in the letter, was enclosed. However, the amount deducted from Stoner's pay

⁵ DePaoli's testimony that he forwarded a draft to his secretary for printing on letterhead was not credible. Although evidence of the computer properties of a drafted letter was received in evidence, there was no evidence of an email to his secretary like the one he issued on June 1. (Tr. 58, 62, 65, 73–74; R. Exh. G-I.)

⁶ R. Exh. O.

⁷ DePaoli provided a vague and less than credible explanation attributing the delay in responding to Stoner's resignation to various union activities and staffing issues. (Tr. 58–67, 72–75; R. Exh. I, L.)

after he resigned from Local 600 in March and continuing through June was \$247.35.⁸

Legal Analysis

The complaint alleges that Local 600’s unlawful failure to acknowledge and process Stoner’s union membership resignation and dues check-off authorization revocation coerced Stoner and breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act; additionally, as a result of Local 600’s failure to act, Stoner’s employer, Ford, discriminated against him by continuing to classify him as a union member in violation of Section 8(b)(2). Local 600 denies the allegations and asserts that the delay in honoring Stoner’s resignation from Local 600 and revocation of his check-off authorization was attributable to excusable neglect and/or Ford’s failure to honor the resignation and revocation.

I. THE SECTION 8(B)(1)(A) CHARGE

A. Stoner’s Resignation and Revocation

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights under Section 7 of the Act, including their right to refrain from engaging in concerted activities. As such, it is well-settled that employees have an absolute right to resign their membership in a union at any time, and that it is unlawful for a union to restrict this right. *E.g.*, *Pattern Makers League v. NLRB*, 473 U.S. 95, 106 (1985) (“by allowing employees to resign from a union at any time, § 8(a)(3) protects the employee whose views come to diverge from those of his union.”). Union members also have a statutory right to revoke authorization for their employer to deduct union dues from their paycheck (dues check-off authorization) at least once a year. *Atlanta Printing Specialties*, 215 NLRB 237, 237 (1974) (holding that Section 302(c)(4) guarantees to an employee who signs a check-off authorization the right to “a chance at least once a year to revoke his authorization.”).

When language in a dues check-off authorization indicates that the dues being deducted are “membership dues,” the presumption is that a resignation from union membership is also a revocation of dues checkoff authorization. *Int’l Brotherhood of Elec. Workers, Local No. 2008, AFL–CIO (Lockheed Space Operations Company, Inc.)*, 302 NLRB 322, 328 (1991). That presumption holds unless there is explicit language within the check-off authorization clearly setting forth an obligation to pay dues even in the absence of membership. *Id.* at 329 (“explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership.”). *Lockheed’s* presumption that dues check-off does not survive a resignation from membership is premised on the understanding that an irrevocable dues check-off authorization constitutes a waiver of an important statutory right—the right to refrain from supporting a union—and “clear and unmistakable language” is needed for the waiver of such rights. *Id.* at 328 (“we

will require clear and unmistakable language waiving the right to refrain from assisting a union, just as we require such evidence of waiver with regard to other statutory rights.”).

Here, the language of Stoner’s dues check-off authorization states that he assigned Local 600 “such amount . . . due for me to the Union as my monthly membership dues in said Union.” This language is like that of the check-off authorization in *Lockheed*, where the Board found that the employee’s resignation from union membership was also a revocation of his dues check-off authorization.

Local 600’s Bylaws, specifically Article 6, Section 17, states that “resignation or termination of (union) membership shall not relieve (a member) from the obligations arising from (a) check off obligation.” However, this language is not found within the dues check-off authorization itself and is not the sort of clear waiver of a statutory right by the employee that *Lockheed* demands. See *id.* at 323 (holding that a waiver requires “explicit language *within the checkoff authorization*.” (emphasis added)). Even if the language in Local 600’s bylaws could be construed to limit Stoner’s right to revoke his dues check-off authorization, at no point did Local 600 raise this argument, nor did it contest the claim that Stoner revoked his dues checkoff authorization. In addition, Local 600 never disputed the assertion made in Stoner’s resignation letter that he authorized a dues check-off solely in conjunction with his becoming a union member. Accordingly, Stoner effectively resigned both his membership in Local 600 and made a valid dues check-off revocation. The only question remaining is whether Local 600’s failure to respond to this joint resignation and revocation constitutes an unfair labor practice.

B. The Delay in Acknowledging and Processing Stoner’s Resignation and Revocation

Failing to timely honor an employee’s request to resign and revoke an authorization to deduct union dues from his or her paycheck restrains the employee’s right to refrain from concerted activity and is thus a violation of Section 8(b)(1)(A). *E.g.*, *Affiliated Food Stores*, 303 NLRB 40, 45 (1991) (finding that a union’s 10-week delay in processing an employee’s revocation of dues deduction and resignation from the union violated Section 8(b)(1)(A)). This is true even when the union’s delay is unintentional—for example, due to a clerical error. *International Brotherhood of Teamsters Local 385 (Walt Disney)*, 366 NLRB No. 96, slip op. at 2, fn. 4 (2018) (holding that a union violated Section 8(b)(1)(A) by failing to timely revoke a dues check-off because the employee’s revocation letter was misfiled).

Local 600 asserts that its delay in processing Stoner’s dues check-off revocation was due to administrative error. DePaoli drafted a letter to Ford on March 12 instructing it to stop deducting dues from Stoner’s paycheck. However, he took no further action. In contrast to evidence of his practice in emailing his draft to his assistant on June 1, so he or she could print it out on Local 600 letterhead, there was no evidence that he emailed his March 12 draft to the assistant for printing. Even if DePaoli’s

⁸ This finding is based on Stoner’s credible and undisputed testimony and the amounts deducted from the pay stubs. (Tr. 32, 39–40; GC Exh. 8–12, 14–15.)

failure to further process Stoner's resignation and revocation request was inadvertent, *Walt Disney* established that a clerical error is no defense to a 8(b)(1)(A) violation. A union may not shield itself from responsibility simply because it lacked ill intent because intent is not a required element of an 8(b)(1)(A) violation. The fact that the evidence failed to establish, as Local 600 puts it, "a pattern of behavior on the part of [Local 600] to willfully ignore [Stoner's] request" does not negate the fact that Local 600's inaction or delay amounted to a restraint on Stoner's Section 7 right to refrain from union affiliation.

Local 600 also seeks to deflect blame to Ford, arguing that because Ford handled payroll, it has sole responsibility for effecting dues check-off revocations. For the reasons previously stated, however, Local 600 failed to fulfill its initial part of the process which requires that it notify Ford of the resignation and dues check-off revocation from Stoner. In *Walt Disney*, the union and employer followed a similar process—the union, upon receipt of a written employee request to revoke dues checkoff, would send an email to the employer's payroll office. 366 NLRB at fn. 4. The union in *Walt Disney* was not able to hide behind the employer to shield itself from responsibility. Local 600, which uses a similar process for dues checkoff revocation, cannot do so either.

Also, like the union's transgression in *Walt Disney*, Local 600 delayed processing of Stoner's until resignation and revocation until after he filed an unfair labor practice charge—about 2-1/2 months later. Local 600 then delayed three additional months before partially reimbursing Stoner for dues deducted from his wages after Local 600 received his resignation and revocation notification. At that time, instead of apologizing for its gross inaction, Local 600 excoriated Stoner for exercising his Section 7 rights by filing charges and seeking remedial action under the Act.⁹

Under the circumstances, Local 600's delay in acknowledging and processing Stoner's membership resignation and dues revocation violated Section 8(b)(1)(A) of the Act because Stoner, after having revoked his authorization for dues check-off, received paychecks in which union dues were deducted. At that point, funds which belonged to Stoner were used to support Local 600 against his wishes and, thus, he was coerced in his right to refrain from supporting the union. See, e.g., *Lockheed*, 302 NLRB at 330 ("by continuing to collect . . . regular dues from (employee's) wages after he communicated his intent to resign membership and revoke authorization, the [union] is treating him as if he is still a member of [the union] or has agreed to pay dues even when not a member.").

In addition, Local 600 breached its duty of fair representation in violation of Section 8(b)(1)(A) by intentionally ignoring Stoner's resignation and revocation requests for over two and one-half months, and by responding reproachfully after learning that he had filed this unfair labor practice charge. See *Vaca v. Sipes*, 386 U.S. 171, 190 (1967) (union breaches this duty when its

conduct toward a member is "arbitrary, discriminatory, or in bad faith.").¹⁰ See also *Marquez v. Screen Actors Guild*, 525 U.S. 33, 44 (1998) ("the duty of fair representation requires a union to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty . . .") (internal quotation omitted).

II. THE SECTION 8(B)(2) CHARGE

Where a union causes an employer to take action that would constitute unlawful discrimination under Section 8(a)(3) of the Act, it commits a 8(b)(2) violation. See *Int'l Woodworkers of America*, 304 NLRB 100, 101 (1991) (holding that for there to be an 8(b)(2) violation, there must be some affirmative act by the union that caused the employer to continue to deduct dues from an employee). Specifically, continuing to accept dues from an employer after an employee revokes a dues check-off authorization can be a 8(a)(2) violation. *Newport News*, 253 NLRB 721, 726 (1980) (union violated Section 8(b)(2) of the Act by causing employer to continue to remit the dues of employees who revoked their dues check-off authorizations and then receiving and retaining their dues); *NLRB v. Atlanta Printing Specialties*, 523 F.2d 783, 784–785 (5th Cir. 1975) (a union violates Section 8(b)(2) by causing employer to deduct and remit dues after valid dues revocation by the employee). Cf. *NLRB v. Local 50, American Bakery and Confectionary*, 339 F.2d 324, 327 (2d Cir. 1964) (a union does not violate 8(b)(2) unless the discrimination it seeks would constitute a violation of 8(a)(3) if done by the employer of its own volition); *NLRB v. Local 776, IATSE (Film Editors)*, 303 F.2d 513, 516 (9th Cir. 1962) (finding that if an employer's act does not constitute a violation of Section 8(a)(3), then a union would not be guilty of an unfair labor practice under 8(b)(2)).

A Section 8(b)(2) violation also requires a showing of intent, on the part of the union, to cause the employer to discriminate. *Plumbers Local 447*, 172 NLRB 128 (1968) (finding it relevant to the 8(b)(2) inquiry that a union's object in picketing was to protest the use of nonunion employees). See also *Northern California Chapter, Associated General Contractors of America*, 119 NLRB 1026, 1029 (1957) (finding a violation where a union's strike against an employer was intended to cause the termination of non-union employees) (emphasis added); *Typographical Union No. 2*, 189 NLRB 829, 829–830 (1971) (finding no 8(b)(2) violation where the union, in interfering with an employee's employment interests, was motivated by the employee's misappropriation of union funds, rather than a desire to coerce union membership).

The overwhelming evidence establishes that Local 600's inaction effectively caused Ford to discriminatorily deduct dues from Stoner's pay. DePaoli's practice in similar circumstances was to draft a letter to Ford notifying it of the employee's resignation from the union and the dues revocation and then forward the draft to his assistant for printing on letterhead. In this instance, however, his failure to process Stoner's resignation and

⁹ Unsurprisingly, Local 600 does not argue that DePaoli's August 16 letter lawfully repudiated its unlawful conduct under *Passavant Memorial Hospital*, 237 NLRB 138, 138 (1978).

¹⁰ The Charging Party argued that a duty of fair representation analysis is inappropriate in this case because the Board majority in *Walt Disney*

commented that such inquiry was "unnecessary" in that case. 366 NLRB at 2 fn. 4. The facts in that case, however, involving numerous discriminatees and different responses by the union and employer, are not entirely like those in this controversy.

revocation for over 2 months was more than mere negligence.

DePaoli's actions in this instance, however, lead to the reasonable inference that he drafted the applicable notification to Ford and then decided to sit on it for a while. Under the circumstances, DePaoli knew or should have known that his inaction would cause Ford to discriminate against Stoner's Section 7 rights in violation of Section 8(a)(3) of the Act by causing the company to continue to deduct union dues from Stoner's wages. Such knowledge on DePaoli's part constituted the requisite intent necessary for a Section 8(b)(2) violation.

CONCLUSIONS OF LAW

1. The Respondent, Local 600, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

2. Ford Motor Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By failing or refusing to promptly honor Stoner's request to resign his union membership and revoke his dues check-off authorizations, Local 600 violated Section 8(b)(1)(A) of the Act.

4. By attempting to cause and causing Stoner's employer, Ford, to continue to deduct dues from his wages and remit such dues to Local 600 notwithstanding the absence of employee authorization for the deductions and remittances, Local 600 violated Section 8(b)(2) of the Act.

5. The unfair labor violations affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Local 600 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. Local 600 will be ordered to honor the resignation from union membership request and dues check-off authorization revocation request of Lloyd Stoner and reimburse him for the union dues deducted from his wages and remitted to Local 600 for the time during which Local 600 failed to timely honor his dues check-off authorization revocation request. Accordingly, Local 600 should be required to pay interest owed to Stoner based on the delay in receiving his dues refunds since March 12, 2018, the date of his revocation request,

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, Local 600, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (the Union), Dearborn, Michigan, 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) Accepting dues deducted and remitted from employees' pay in the absence of an authorization for the deductions and remittances.

(c) In any like or related manner restraining or coercing member 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) Accept or acknowledge the effectiveness of employee Lloyd Stoner's resignation of Union membership since on or about March 12, 2018.

(b) Make whole Lloyd Stoner for any monetary loss, with interest, that he may have suffered because of our acceptance of dues deducted and remitted to the Union in the absence of an authorization for the deductions and remittance since on or about March 12, 2018. (c) Reimburse Stoner for the dues deducted from his wages and remitted to the Respondent since March 12, 2018, with interest, in the manner set forth in the remedy section of this decision.

(c) 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.

(d) Within 14 days after service by the Region, post at its Dearborn, Michigan facility copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 7, 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, the 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 employees by such means. Reasonable steps shall be taken by the Respondent 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 its members who have been represented by the Respondent during their employment with Ford Motor Company at its Dearborn, Michigan facilities since March 12, 2018.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 7 signed copies of the notice enough for posting by Ford Motor Company at its Dearborn, Michigan facilities, if they wish, in all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the

¹¹ 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.

¹² 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."

Regional Director for Region 7 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.

Dated, Washington, D.C. February 21, 2019

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 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 guaranteed you by Section 7 of the Act.

WE WILL honor the request of Lloyd Stoner to resign from membership.

WE WILL reimburse Lloyd Stoner the dues deducted from his wages and remitted to us since March 12, 2018, with interest.

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

The Administrative Law Judge's decision can be found at www.nlr.gov/case/07-CB-221096 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.

