

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: September 18, 2018

TO: John D. Doyle, Regional Director
Region 10

FROM: Jayme L. Sophir, Associate General Counsel
Division of Advice

SUBJECT: Amalgamated Transit Union, Local 732 518-4030-1400
(MV Transportation) 518-4030-1408
Cases 10-CA-205146, 10-CB-205150 524-5030-0000
536-2556-0000
536-2560-0000
536-2562-0000
536-2571-0000

The Region submitted these cases for advice as to whether the Employer violated Section 8(a)(1), (2), and (3) by withholding dues from the Charging Party's pay and remitting them to the Union based on a dues-checkoff authorization the Charging Party signed under the predecessor employer, and whether the Union violated Section 8(b)(1)(A) and (2) by providing the Employer with a list of drivers previously employed by the predecessor and receiving their dues from the Employer.

We conclude that the Region should issue complaint, absent settlement, alleging that the Employer unlawfully withheld dues from employees' pay and remitted them to the Union based on a dues-checkoff authorization they signed under the predecessor employer, and that the Union unlawfully received their dues from the Employer, because the authorization cards that they signed did not specifically authorize dues checkoff with a successor employer; thus, those employees did not clearly and unmistakably agree to continue making checkoff deductions with the successor employer. Additionally, we conclude that reimbursement to the Charging Party is appropriate because (b) (6), (b) (7)(C) wanted to stop paying dues and thereby effectively resign from the Union.

FACTS

Metro Atlanta Rapid Transit Authority (MARTA), is a public transit system in Atlanta, Georgia, operating both bus and rail transportation. Amalgamated Transit Union Local 732 (the Union) was the collective-bargaining representative of MARTA employees. The Charging Party worked for MARTA as a (b) (6), (b) (7)(C) beginning in (b) (6), (b) (7)(C) executed a Dues Deduction Authorization on (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), and dues were thereafter withheld and remitted from MARTA to the Union. The Dues Deduction Authorization along with the Application for Membership and the Obligation are all contained on the same sheet of paper and separated by dotted lines. The layout and contents of the Application for Membership and Dues Deduction Authorization executed by the Charging Party in (b) (6), (b) (7)(C) are the same as the ones used today and read, in relevant part:

APPLICATION FOR MEMBERSHIP

....

I hereby authorize and request my employer to deduct from my wages, and to pay the proper officers of Division 732 Atlanta of Amalgamated Transit Union the amount of my membership dues in said Union, as dues are defined in the By-laws of said Union, and I hereby assign such deductions to said Union. It is understood that under this authorization and assignment one month's dues, as requested by the said Local, may be deducted in advance, and that remittance will be made by the Company to the Local accordingly.

DUES DEDUCTION AUTHORIZATION

(To be signed by MEMBERS only)

I hereby authorize and request my employer to deduct from my wages, and to pay to the proper officers of [the Union] the amount of my membership dues in said Union, as dues are defined in the By-laws of said Union, and I hereby assign such deductions to said Union....

This authorization and assignment, which is entirely voluntary on my part, shall be irrevocable for the period of one year from the date hereof, or until the termination of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner; and I agree and direct that this authorization and assignment shall be automatically renewed, and shall be irrevocable for successive periods of one year each or for the period of each succeeding applicable collective bargaining agreement between the Company and the Union, whichever shall be shorter, unless revoked by me by signed notice sent by registered mail to the Company and the Union, and received by them not more than fifteen days after the expiration of each period of one year, or of each applicable collective bargaining agreement between the Company and the Union, whichever occurs sooner.

The Obligation section reads, in relevant part, “I will keep myself in good standing by paying all dues, fines and assessments required.”

The Application for Membership is the only section where there is a space to write the name of the Employer; the Charging Party is the only employee known to have hand-written “MARTA,” the predecessor employer, on this line. The Charging Party signed all three sections (the Dues Deduction Authorization, the Application for Membership, and the Obligation).

In early 2016, MARTA subcontracted its paratransit operations to MV Transportation (the Employer); subsequently, the Employer and the Union entered into collective-bargaining negotiations.¹ The Employer stopped withholding dues in May 2016 while negotiating for a first contract with the Union; thereafter, in or about July 2016, the parties agreed to dues checkoff, though this agreement was not reduced to writing. The Union provided the Employer with a list of drivers previously employed by MARTA, who, like the Charging Party, had executed a Dues Deduction Authorization. The Employer used this list to begin deducting dues in October 2016 and remitting them to the Union.

When the Charging Party noticed that dues deductions had resumed, [REDACTED] began to question the Employer and the Union about why these deductions had been made. First, [REDACTED] asked (b) (6), (b) (7)(C) why dues were being deducted; the Manager replied that the Charging Party needed to talk to the Union. The Charging Party then asked the Union’s (b) (6), (b) (7)(C) about why dues were being deducted from [REDACTED] paycheck and [REDACTED] explained that the Union sent a list to the Employer of dues-paying members and that this list included the Charging Party’s name. The Charging Party asked why [REDACTED] name was on the list and the (b) (6), (b) (7)(C) explained because [REDACTED] was a dues-paying member. The Charging Party told the (b) (6), (b) (7)(C) did not think this was fair because the employees were not being represented and the Union didn’t have a contract with the Employer. The Union’s (b) (6), (b) (7)(C) replied that the Union was the employees’ collective-bargaining representative, and that the Employer and the Union would enter into a collective-bargaining agreement. The Charging Party then argued that the predecessor’s contract with the Union stated that [REDACTED] could choose any labor organization [REDACTED] wished.² The (b) (6), (b) (7)(C) replied that the Union was

¹ It appears that during negotiations, the previous collective-bargaining agreement between MARTA and the Union—set to expire on December 31, 2017—remained in place.

² MARTA’s contract with the Union stated: “As MARTA’s contractor and the employer of mass transit employees, Contract[or] is obligated to bargain collectively with any

the employees' current bargaining representative and the conversation ended. The Charging Party also asked during Union meetings why (b) (6), (b) (7) dues were being deducted. The Union explained that it was because (b) (6), (b) (7) was a dues-paying member. The Charging Party also contacted Human Resources, on at least two occasions, to ask who had given the Employer authority to withhold (b) (6), (b) (7) dues. Initially, (b) (6), (b) (7) was told to contact the Union. After the Charging Party said that (b) (6), (b) (7) had already done so, (b) (6), (b) (7) was told that someone from HR would answer (b) (6), (b) (7) question, but no one ever did. There is no evidence that other employees have expressed a desire to revoke their dues authorizations, stop paying dues, or resign from the Union.

ACTION

We conclude that the Region should issue complaint, absent settlement, because the authorization card that the Charging Party signed did not specifically authorize dues checkoff with a successor employer; thus, (b) (6), (b) (7) did not clearly and unmistakably agree to continue making checkoff deductions with the successor employer. Additionally, we conclude that reimbursement to the Charging Party of dues deducted by the Employer is appropriate where (b) (6), (b) (7) made it clear to the Employer and the Union that (b) (6), (b) (7) wanted to stop paying dues.

A dues-checkoff authorization is a contract between an employee and an employer, authorizing the employer to withhold dues from the employee's wages.³ Such contracts generally expire upon termination of the employment relationship.⁴ The Board has long recognized that, apart from the requirement for periodic revocability set forth in Section 302(c)(4),⁵ disputes involving dues-checkoff provisions essentially involve contract interpretation rather than interpretation and application

union representing its employees and comply with the terms and conditions of any collective bargaining agreement that Contractor enters into with such union.”

³ *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 327 (1991).

⁴ *See Railway Clerks (Yellow Cab)*, 205 NLRB 890, 890–92 (1973), *enfd.*, 498 F.2d 1105 (5th Cir. 1974).

⁵ 29 U.S.C. § 186 (c)(4) (2012) (“money deducted from the wages of employees in payment of membership dues in a labor organization . . . a written assignment 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”).

of the Act.⁶ As the Board explained in *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*:⁷

A check-off authorization is that special form of contract defined in the Restatement 2d, Contracts Section 317 (1981), as an 'assignment of a right.' More specifically, a checkoff authorization is a partial assignment of a future right, that is, an employee (the assignor) assigns to his union (the assignee) a designated part of the wages he will have a right to receive from his employer (the obligor) in the future, so long as he continues his employment. The employer is thereby authorized to pay the specified amounts to the union when the employee's right to wage payments accrues. Further, an assignment may be conditional and/or revocable, and when an assignment is made upon a condition, the absence or disappearance of that condition may destroy the assignee's right.

Where the initial checkoff does not provide for dues deduction beyond the immediate employment relationship, a new checkoff providing for dues deduction by the new employer to the union would be needed. The Board requires that a waiver of an employee's Section 7 right to refrain from assisting a union through dues checkoff be clear and unmistakable.⁸ In *Kroger Co.*,⁹ for example, the dues-checkoff authorization signed by the employee was not a clear and unmistakable waiver of his Section 7 right to refrain from supporting the union through checkoff because, while it authorized transfer of the obligation to "any other Employer under contract with Local 455" in the event the charging party changed employment, it did not address the situation at hand, i.e., reemployment by the same employer. In contrast, in *Steelworkers Local 4671 (National Oil Well)*,¹⁰ the Board found that an employee waived his right to cease paying dues upon his immediate resignation from the union because his dues checkoff form clearly and unmistakably set forth an obligation to pay

⁶ *Kroger Co.*, 334 NLRB 847, 849 (2001) (citation omitted).

⁷ 302 NLRB at 327 (citations omitted).

⁸ *See id.* at 328 (employee's agreement to such an arrangement must be manifested by "clear and unmistakable language").

⁹ 334 NLRB at 849.

¹⁰ 302 NLRB 367, 368 (1991).

dues, irrespective of his membership status, and absent revocation within the specified window period.¹¹

A union must honor an employee's clear and unequivocal request to resign his or her union membership. Thus, in *Machinists District 70 (NCR Corp.)*, the union unlawfully denied a member's resignation request where she "plainly communicated her desire to resign" by saying she "want[s] to get out of the [u]nion."¹² No particular format can be required to effect a resignation; rather, "[a]n employee may communicate his resignation from membership in any feasible way and no particular form or method is required so long as he clearly indicates that he no longer wishes to remain a member."¹³

To the extent that there is any ambiguity or lack of specificity as to whether a member has resigned from a union, the union has the burden to clarify and provide the union member with information about his or her rights and responsibilities.¹⁴ Therefore, a union violates the Act when it is apparent that an employee is attempting to resign from union membership, and the union fails to permit the resignation or at least to seek to clarify the employee's intent.¹⁵

To remedy a checkoff violation, the Board will order an employer and/or union to cease using a defective system or cards, and notify employees of the defect through a notice posting, as well as reimburse any employee who was coerced either when

¹¹ *See id.* ("...please deduct from my pay each month, while I am in employment with the collective bargaining unit in the Company, and irrespective of my membership status in the Union, monthly dues, assessments...").

¹² 270 NLRB 970, 970 (1984).

¹³ *Local 80 Sales, Service & Allied Workers' Union (Capitol-Husting Co., Inc.)*, 235 NLRB 1264, 1265 (1978).

¹⁴ *See Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349, 352–53 (1995) (union had the burden to clarify and provide information if the resignation was unclear and lacked specificity).

¹⁵ *See id.* at 352–53 (union obligated to clarify a member's attempted resignation, if ambiguous).

initially authorizing the withholding¹⁶ or by being made to maintain it after requesting a revocation.¹⁷ For example, in *Teamsters Local 845 (Stone Container)*, the Board ordered dues reimbursement to an employee because the union refused to accept his request to revoke his previously executed dues-checkoff authorization upon his membership resignation.¹⁸

Here, we conclude that the Charging Party's Dues Deduction Authorization is not valid as to the Employer because the form does not contain clear and unmistakable language addressing successorship; it refers only to the "employer" and does not specifically reference successor employers. Rather, the Dues Deduction Authorization is an agreement only between the Charging Party and [REDACTED] predecessor employer at the time [REDACTED] signed it in [REDACTED]. Thus, the language in the Authorization does not constitute a clear and unmistakable waiver by the Charging Party to have [REDACTED] dues deduction resumed by a successor employer once the predecessor employer ceased that deduction.¹⁹

¹⁶ *E.g. Baggett Indus. Constructors*, 219 NLRB 171, 171–73 (1975) (affirming ALJ's order to union to cease using defective cards and checkoff system and reimburse the employees who were coerced into signing dues checkoff forms). *See also Teamsters Local 886 (Unit Parts Co.)*, 119 NLRB 222, 223 (1957), *enfd.*, 264 F.2d 21 (10th Cir. 1959) (Board ordered union to cease giving effect to defective authorizations and notify employer to cease honoring defective cards, and refund all employees for dues collected pursuant to involuntary checkoff authorizations because the union had threatened all employees that it would not sign an agreement it had reached with the employer, thus preventing the employees from receiving benefits provided for in this agreement, unless 80 percent of them joined the union and signed checkoff authorization cards).

¹⁷ *E.g. Teamsters Local 845 (Stone Container)*, 302 NLRB 957, 959 (1991) (ordering union to cease and desist from refusing to honor employees' checkoff revocation requests, and to reimburse charging party for dues unlawfully deducted after he had resigned from union).

¹⁸ *Id.*

¹⁹ *See, e.g., Kroger Co.*, 334 NLRB at 849 (requiring clear and unmistakable language when an employee returned to work for the same employer after being absent for six months).

We also conclude that reimbursement of the Charging Party's dues is appropriate because, although the Charging Party did not explicitly request a revocation or resignation, the Union and Employer knew that (b) (6), (b) (7) was essentially seeking a revocation: they knew that (b) (6), (b) (7) was unhappy that the Employer had begun deducting dues from (b) (6), (b) (7) paycheck and that (b) (6), (b) (7) was seeking information regarding dues revocation procedures. In this regard, the Charging Party asked various Union and Employer officials on several occasions why (b) (6), (b) (7) was having to pay dues and challenged the fairness of (b) (6), (b) (7) dues obligation. It was only after (b) (6), (b) (7) efforts to obtain information were frustrated that the Charging Party filed the instant charges.²⁰

²⁰ The Region also requested guidance regarding whether any potential remedy should encompass other employees from whom the Employer has similarly withheld dues based on authorizations signed under the predecessor employer. The Region should not seek dues reimbursement for other employees absent evidence that they gave the Union or Employer some indication that they wanted to stop paying dues or resign from the Union. The Board will not order the reimbursement of dues if doing so is merely punitive rather than remedial. For example, in *Stainless Steel Prod., Inc.*, 157 NLRB 232, 233 (1966), reimbursement was found not appropriate—despite a finding of unlawful assistance and an unlawful checkoff practice—because no employee notified the employer that he or she wished to cancel his or her dues checkoff authorization. 157 NLRB at 233. We have found no cases in which the Board ordered reimbursement of dues to employees who had not at least attempted to revoke their dues checkoff authorizations, even if the checkoff authorizations were invalid.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(1), (2), and (3) and the Union violated Section 8(b)(1)(A) and 8(b)(2) by deducting dues from employees' pay based on dues-checkoff authorizations signed under the predecessor employer. The Region should seek a cease and desist remedy prohibiting the further deduction of dues based on these checkoff authorizations, and should seek reimbursement of the dues deducted from the Charging Party's pay.²¹

/s/
J.L.S.

ADV.10-CB-205150.Response.MV (b) (6), (b) (7)(C)

²¹ If the Region becomes aware of additional employees who have attempted to revoke their dues authorizations, or have indicated to the Union/Employer that they were unhappy paying dues, the Region should seek dues reimbursement for those employees as well.