

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

**UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 400 CLC
(KROGER STORE NO. 755)**

and

Case 06-CB-222829

SHELBY KROCKER, an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Counsel for the General Counsel respectfully requests that the Board consider the following Exceptions to the findings, conclusions, and errors contained in the Decision of Administrative Law Judge Robert A. Giannasi, which issued in the above-captioned matter on April 20, 2020.¹ In support of these Exceptions, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.

1. ALJD, p. 6, lines 4-7: The Administrative Law Judge's failure to accept the General Counsel's assertion that language ambiguity, alone in union communications or documents, amounts to either a violation of the duty of fair representation or restraint or coercion under Section 8(b)(1)(A). In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
2. ALJD, p. 7, lines 2-3: The Administrative Law Judge's finding that the "MUST BE SIGNED" notation did not contradict the heading of the dues check-off form that stated that signing the form was voluntary. In support thereof, Counsel for the General

¹ "ALJD, p." refers to the page of the Decision of the Administrative Law Judge.

Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.

3. ALJD, p. 7, lines 5-6: The Administrative Law Judge’s finding that there was no coercion either in the language of the form or extraneously in the “MUST BE SIGNED” language. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
4. ALJD, p. 7, lines 21-24: The Administrative Law Judge’s failure to apply the proper standards when analyzing if the “MUST BE SIGNED” language in the dues check-off authorization form breached the Union’s duty of fair representation and fiduciary obligation to Charging Party Krockner. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
5. ALJD, p. 7, lines 12-14: The Administrative Law Judge’s conclusion to find that that there is nothing confusing in the use of the form and certainly not enough to amount to restraint or coercion.” In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
6. ALJD, p. 7, lines 12-19: The Administrative Law Judge’s failure to apply the proper standards when analyzing the language and/or format of the single three-part form containing a “Membership Application,” a “Voluntary Check-Off Authorization,” and a “UFCW Local 400 ABC Payroll Deduction Authorization Form.” The three-part form was confusing and ambiguous and failed to clearly provide information to employees for the employees to make an informed decision on union membership and dues check-off, and thereby breached the Union’s duty of fair representation and fiduciary

obligation to Krockner. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.

7. ALJD, p. 8, lines 20-31: The Administrative Law Judge's failure to find that the three-part form contained ambiguous language which was coercive, e.g., "year to year thereafter," "subsequent yearly period," and "whichever occurs sooner" "distorts the requirements of Section 302(c) (4) of the Labor Management Relations Act in such a way as to restrain or coerce an employee in the right to revoke his or her authorizations when appropriate." In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
8. ALJD, p. 8, lines 29-30: The Administrative Law Judge's finding that that the three-part form one sentence form which contained the phrases e.g., "year to year thereafter," "subsequent yearly period," and "whichever occurs sooner" "when read in context the meaning of the alleged objectionable language is plain, reasonable and in no way impermissible." In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
9. ALJD, p. 9, lines 9-10: The Administrative Law Judge's reliance on *Kroger Co.*, 334 NLRB 847 (2001) to find that the authorization form language permitting transfer to a new employer would be a proper waiver under Board law. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.
10. ALJD, p. 9, lines 14-17: The Administrative Law Judge's reliance on *Associated Builders and Contractors v. Carpenters Vacation and Holiday Trust Fund*, 700 F. 2d 1269, 1276 (9th Cir. 1983), in finding that Section 302 (c) (4) "does not require that an

employee be free to revoke the check-off whenever he changes employers.” The Union’s maintenance of the transferability language in the check-off authorization form was coercive and breached its duty of fair representation and fiduciary obligation to Charging Party Krocker. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.

11. ALJD, p. 9, lines 41-42: The Administrative Law Judge’s reliance on *Frito Lay, Inc.*, 243 NLRB 137, 139 (1979), when analyzing the Union’s rejection of Charging Party’s Krocker’s request to revoke her dues deduction check-off. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.

12. ALJD, p. 10, lines 5-10: The Administrative Law Judge’s failure to find that, if asked, that a union has an affirmative duty to spell out the specific dates within which the revocation request can be submitted. The Union’s failure to provide Charging Party Krocker with the actual dates within which to timely request a revocation of her dues check-off authorization was coercive and breached its duty of fair representation and fiduciary obligation to Krocker. In support thereof, Counsel for the General Counsel relies on the accompanying Brief in Support of Exceptions and the record as a whole.

Dated at Pittsburgh, Pennsylvania, this 2nd day of July 2020.

Respectfully submitted,

/s/ Julie M. Polakoski-Rennie

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