

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

---

AT&T SERVICES, INC.,

Respondent,

and

Case No. 07-CA-228413

VERONICA ROLADER, an individual,

Charging Party.

---

**CHARGING PARTY’S ANSWERING BRIEF**

Charging Party Veronica Rolader (“Charging Party or Ms. Rolader”) submits this Answering Brief pursuant to Section 102.35(a)(9) of National Labor Relations Board’s (“Board”) Rules and Regulations in order to respond to certain points made by Respondent AT&T Services, Inc. (“AT&T”) in its Opening Brief and, in an abundance of caution, to respond to the brief of non-party Communications Workers of America (“CWA”), which was filed without an accompanying motion or the Board’s prior assent.<sup>1 2</sup>

---

<sup>1</sup> CWA is not a party to this case. CWA filed a Motion to Intervene and Reopen the Hearing, but that motion remains pending before the Board. All Parties (the General Counsel, AT&T, and Charging Party) opposed CWA’s Motion. Despite these facts, Charging Party will respond to the assertions contained in CWA’s “Initial Brief On Stipulated Record” filed on September 8, 2020. In doing so Charging Party does not concede that CWA is or should be a party in this case, or that it legitimately filed its brief in this matter, since it had no permission to do so.

<sup>2</sup> Charging Party refers to the Joint Motion to Submit Stipulated Record to the Board and Joint Stipulation of Facts as “Stipulation” and will cite to its exhibits as “Ex.” Similarly, Charging Party will refer to her Brief on the Merits as “Charging Party Br.,” AT&T’s Initial Brief on the on Merits of Stipulated Record as “AT&T Br.,” and CWA’s Initial Brief on Stipulated Record as “CWA Br.”

## **I. Charging Party's Response to AT&T's Initial Brief on Merits of Stipulated Record**

Charging Party agrees with AT&T's view that several Board decisions should be overturned, most notably *Frito-Lay*, 243 NLRB 137 (1979). Charging Party also agrees that in a Right to Work state like Michigan, checkoffs should be revocable at will under cases like *Penn Cork & Closures, Inc.*, 156 NLRB 411 (1965), *enforced*, 376 F.2d 52 (2d Cir. 1967) and *Metalcraft of Mayville, Inc.*, 367 NLRB No. 116 (Apr. 17, 2019).

Additionally, Charging Party recognizes and agrees with AT&T's argument that the Board could consider overruling *Elec. Workers, Local 2088 (Lockheed Space Operations Co.)*, 302 NLRB 322 (1991) (hereinafter, "*Lockheed*"), and *National Oil Well*, 302 NLRB 367 (1991), and allow employees to revoke their checkoffs upon resignation from union membership. AT&T Br. at 12–15. Charging Party recognizes that this option would simplify the Board's jurisprudence regarding checkoff revocations, thereby effectuating the core purpose and policy of the Act—*voluntary* unionism.

Overturing *Lockheed* and *National Oil Well* will not harm collective bargaining or unions, in general. Rather, it will end an unlawful way unions trap unwary employees into paying union dues for much longer than they want to, or ever imagined they "agreed" to. Generally speaking, checkoff "agreements" are filled with confusing legalese and are signed as part and parcel of union membership. Unsuspecting employees are at the mercy of the drafters of these boilerplate checkoffs, which results in them unwittingly binding themselves to financially assisting a union despite their express desire to exercise their Section 7 right to refrain from doing so.<sup>3</sup> In other words, whether

---

<sup>3</sup> Charging Party agrees with AT&T that a checkoff's automatic renewal provisions are not supported by consideration. This is especially true in cases where employees have attempted to revoke their checkoff outside of the window period. Surely no one can argue they are getting the "benefit" of automatic dues deductions from a checkoff they have explicitly disclaimed.

or not an employee's checkoff contains so-called "*Lockheed* waiver language" is up to the union, not the employee. Removing these technical traps that currently ensnare unwitting employees would create a dues checkoff system worthy of Section 7's text: employees who wish to have dues deducted can continue to do so for as long as they like, and those who no longer wish to have dues deducted can immediately stop. *See generally Teamsters Local 385*, 366 NLRB No. 96 (June 20, 2018) (litigation over union denying or failing to provide window period information so employees could timely revoke); *Smith Food & Drug*, 362 NLRB 292 (2015), *petition for review granted in part sub nom. Stewart v. NLRB*, 851 F.3d 21 (D.C. Cir. 2017), *remanded*, 366 NLRB No. 138 (2018) (complex litigation over dues checkoff revocations that could have been avoided if *Lockheed* was overruled, as the employees' checkoffs would have been immediately revocable).

Finally, Charging Party agrees with AT&T's contention that the certified mail and "one revocation letter per envelope" requirements for checkoff revocation contained in both the CBA and Charging Party's checkoff are unlawful. AT&T Br. at 15–17. However, Charging Party disagrees with AT&T regarding whether or not it should be required to provide employees with their next available window period date, and the scope of the remedy to be provided. These issues are discussed in turn.

**A. AT&T should have provided Charging Party with her revocation window dates.**

The Board should find that AT&T violated the Act when it failed to provide Charging Party with *all* of her available dates to revoke her checkoff, especially her *next available* date. AT&T should not be able to foist this responsibility solely onto the shoulders of CWA. AT&T argues that it "cannot be required to meddle in the affairs between the Union and its bargaining unit members." AT&T Br. at 17. In doing so it forgets that a checkoff is a contract not between the union and employee, but between AT&T and the employee, to which the union is a third party beneficiary.

Additionally, AT&T administers and enforces that contract for the benefit of CWA, as demonstrated by AT&T's affirmative rejections of Charging Party's checkoff revocations. To the extent AT&T believes it should not be required to "meddle in the affairs" of CWA and/or its affiliates regarding checkoffs, it should negotiate such a position in its CBA. But pursuant to the current and former CBAs AT&T is *required* to meddle in such affairs by agreeing to administer the checkoff system. See Stipulation at ¶¶ 6(c), 7; Ex. 2 at 8–12 (Art. 7, Union Deduction from Wages); Ex. 9 at 8–12 (same).

Therefore, when AT&T twice denied Charging Party's revocation requests, it should have simultaneously informed her of when her *next available* revocation date would occur. Charging Party agrees that informing employees of any window period dates is *also* the Union's responsibility under the duty of fair representation. See General Counsel Memo. 19-04, Unions' Duty to Properly Notify Employees of Their General Motors/Beck Rights and to Accept Dues Checkoff Revocations after Contract Expiration, at 8–9 (Feb. 22, 2019). However, when AT&T twice denied Charging Party's revocation letters as untimely, it had to calculate the actual window period dates when such a request would be timely, and had to notify the Charging Party of the rejection (as it twice did here). Thus, it imposes no burden on AT&T, the rejecting party, to inform the rejected employee of the next available window period dates that it had already calculated.

Requiring rejecting parties to confess the next available window period dates would greatly assist employees in the exercise of their Section 7 rights, and make the revocation process less of an onerous gauntlet to run. Moreover, such a minor disclosure requirement simply "comes with the territory" when unions and employers establish and enforce restrictive dues checkoff systems. See generally *Monroe Lodge No. 770, Int'l Ass'n of Machinists & Aerospace Workers v. Litton Bus. Sys., Inc.*, 334 F. Supp. 310, 316–17 (W.D. Va. 1971), *aff'd*, No. 71-2063, 1972 WL 3025

(4th Cir. May 15, 1972) (employees not required to send a second revocation letter after their first one was rejected, as the first letter clearly put the union and employer on notice of the employees' desires); *Felter v. S. Pac. Co.*, 359 U.S. 326 (1959) (employees trying to revoke checkoffs should not face undue burdens); *Local 58, IBEW (Paramount Indus., Inc.)*, 365 NLRB No. 30 (Feb. 10, 2017), *enforced*, 888 F.3d 1313 (D.C. Cir. 2018) (same). In this case AT&T (in its CBA with CWA) *chose* to saddle employees with such burdensome procedures. As such, its failure to provide highly important and readily-accessible information to Charging Party and other employees seeking to revoke their checkoffs violates Section 8, just as a union's similar conduct would constitute a parallel violation. *See, e.g., Teamsters Local 385*, 366 NLRB No. 96. AT&T is responsible for this violation here because it specifically rejected Charging Party's checkoff revocations and continued to enforce her checkoff.

AT&T also argues that it was not required to provide Charging Party with the next available date because it let her know of the previous window period, which is functionally the same. However, this is wrong for two reasons. First, employees may not know that the dates will be the same next year as the dates provided, and employees should be given the information necessary to complete their revocation. Second, AT&T ignores the fact that it failed to provide the window period date connected to the anniversary of the checkoff and instead provided only the date tied to the anniversary of the CBA. Charging Party's checkoff states that the window period is the fourteen days "prior to the contract anniversary date (defined as each 365 day period from the date of execution of *this Agreement*) or termination date of the current or subsequent Collective Bargaining Agreement . . . ." Ex. 3 (emphasis added). Given that a checkoff is a contract, "this agreement" can only mean the anniversary date of Charging Party's execution of the checkoff. AT&T failed to provide this window period and, in fact, denied Charging Party's second revocation, which was

sent during that applicable window period. *See* Exs. 6, 8; *see NLRB v. Atlanta Printing Specialties & Paper Prods. Union 527*, 523 F.2d 783 (5th Cir. 1975) (employees are entitled to at least two *separate* window periods to revoke).

**B. If the Board finds AT&T violated the Act, it should grant relief retroactively to the Charging Party and her fellow employees.**

AT&T argues that even if a violation is found, the Board “should not issue a remedial Order against the Company, because it acted in good faith under current law, and therefore the Board’s decision should apply prospectively only.” AT&T Br. at 19, n.3. This argument is flawed for several reasons.

AT&T argues it was simply following existing law and could not have anticipated the overruling of cases like *Frito-Lay* or *Lockheed*. But even if that were true, there are more prosaic violations in this case that AT&T certainly should have foreseen, such as its maintenance of a restrictive rule that revocations must be sent only by certified mail and in individual envelopes. As Charging Party showed in her Brief on the Merits the Board has long struck down such unwarranted restrictions in other contexts, and those cases should apply here. Charging Party Br. at 20. Thus, even giving AT&T the benefit of the doubt regarding the foreseeability of *Frito-Lay* or *Lockheed Space* being overruled, the company cannot escape all responsibility for its violations in this case. *See generally United Nurses & Allied Professionals v. NLRB*, \_\_\_ F.3d \_\_\_, 2020 WL 5541150, at \*6 (1st Cir. Sept. 15, 2020) (upholding Board decision applying a remedial order retroactively, stating that “Hoping that one wins a contested issue is hardly the type of reliance that provides cause for not applying a ruling to the case in which it is issued.”).

Most importantly, a prospective ruling would deny Charging Party a remedy for the unfair labor practices committed in this case, violations she has been litigating for several years. Unlike in the cases cited by AT&T, this is not a situation where a union and employer are fighting over a

policy that can be changed going forward. This is a case brought by an individual whose rights were violated and who has spent significant time and energy fighting to vindicate her rights and those of her co-workers. *See* AT&T Br. at 19 n.3 (citing cases); *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015) (union filed charges against an employer's new checkoff policy); *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (Aug. 26, 2016) (union filed charges challenging an employer's failure to bargain). Charging Party is entitled to a remedy.

The benefits of a retroactive remedy vastly outweigh any minimal burdens on AT&T. There is a strong need for a unit-wide notice posting in this case. AT&T is a large company and there are undoubtedly many employees—perhaps thousands—who signed the same or similar checkoffs, and who work under various CWA contracts. These employees need clear notice of their rights, and AT&T should not be allowed to shirk responsibility for notifying its workforce of these issues and its violations.

Indeed, any remedial requirement imposes a minimal burden on AT&T. As the Board well-knows, its remedies are not punitive, but merely attempt to correct the unlawful action committed, generally by making the employee whole and by letting the bargaining unit employees know of their rights under the Act (rights that may not have been known by the employees or not previously recognized by the employer). Such a remedy will not require much effort on AT&T's part. On the other hand, any such minimal burden will effectuate the policies of the Act by explicitly putting employees on notice of their Section 7 rights. Thus, the Board should require AT&T to remedy its actions retroactively, so Charging Party and her fellow employees receive the full remedy to which they are entitled under the Act.

## **II. Charging Party's Response to CWA's Initial Brief on Stipulated Record**

### **A. CWA relies on irrelevant facts and unalleged allegations.**

CWA's brief is riddled with irrelevant facts and theories unalleged in the General Counsel's complaint against AT&T. In both its statement of facts and application of law, CWA's Brief appears to defend the Union against a Section 8(b) violation. But there is no Section 8(b) violation alleged in this case against AT&T. CWA and/or its affiliates settled a virtually identical and parallel ULP case, No. 07-CB-227560, thereby resolving any Section 8(b) liability and limiting this litigation to employer conduct under Section 8(a).

For example, CWA's statement of facts explains its operating structure in detail, CWA Br. at 5. However, a determination that AT&T violated Section 8(a) does not require detailed (or any) findings regarding CWA's internal organizational structure. Rather, any mention of CWA and/or its affiliates in the Stipulation was largely a matter of background. The AT&T-CWA CBA and relevant documentary evidence are all in the record and speak for themselves. Any facts regarding CWA's operating structure could be relevant to a "CB" charge to determine union liability, but this is a "CA" charge against an employer—union liability is not at issue here.

Even if these facts were relevant, CWA plays a shell game, arguing that its locals, districts and the international union are separate entities that have no apparent relationship to each other. However, CWA International is the Section 9(a) representative under the CBA, which CWA Local 4009 apparently enforces and has the power to enter into settlement agreements binding the exclusive bargaining representative. Ex. 9; *see* Charging Party's Opp. to CWA's Mot. to Intervene, at 1 n.1, 5–6 & nn. 3–4 (Aug. 3, 2020). Thus, as discussed in detail in Charging Party's Opposition to

CWA's Motion to Intervene, CWA and its affiliates are closely-linked, interrelated, and at least in an agency relationship.<sup>4</sup>

CWA cites to two cases contending that its local is distinct from itself. Union Br. at 5 (citing cases). However, those cases merely stand for the proposition that locals can be distinct entities, not that locals are, per se, distinct. *Carbon Fuel Co. v. United Mine Workers of Am.*, 444 U.S. 212, 217 (1979) (outlining agency test for imputing conduct to international union); *Coronado Coal Co. v. United Mine Workers of Am.*, 268 U.S. 295, 304–05 (1925) (analyzing union conduct through agency principles and finding the union district to be responsible for actions of its agents and certain subordinate local unions). CWA provides no facts or rationale for why the local union would not be deemed an agent pursuant to the test applied in the cited cases. As such, CWA's bare conclusion that its local is "separate" should be rejected, and its proffered "facts" disregarded as immaterial to this "CA" case.

Similarly, CWA's Brief curiously shifts the blame for the unlawful rejection of Charging Party's dues revocation onto AT&T, or asserts that *the union* has not violated the Act. See CWA Br. at 6 (emphasis added) ("[T]he *Local* did not actively seek to enforce the authorization. Rather, the Employer, acting on its own accord, made the decision to deny CP's revocation as untimely."); *id.* at 10 ("The Company denied CP's request. At no time was the CWA involved in the Company's decision to deny CP's request."); *id.* at 14 n.6 ("[T]he union has not even sought to enforce the certified mail requirement in this matter."); *id.* at 15 ("Neither the Local nor the International has ever sought to vary from the terms of CP's checkoff authorization."). These assertions and attempt

---

<sup>4</sup> As CWA engages in these "shell games" to avoid liability or, in this case, get two "bites at the apple," the Board should require CWA and other unions to make their operating structure between affiliates transparent, such that employees know who exactly they are dealing with and can avoid unnecessary litigation over these issues.

to shift blame are irrelevant; and, to the extent the Union succeeds in shifting blame onto AT&T, it further assists Charging Party's and the General Counsel's case. This is a "CA" case against *the employer only*. Whether or not CWA or its affiliate engaged in unlawful conduct or assisted AT&T in its conduct is immaterial. CWA's blame-shifting onto AT&T further proves the allegations in the complaint. This appears to be contrary to CWA's stated purpose, which is defending *against* a violation of the Act in this matter—which would require defending AT&T's, rather than CWA's conduct. However, even taking CWA's claims at face value, CWA, through Local 4009, did not stop the dues deductions, despite receiving the same revocation letters from Charging Party, nor did the CWA unions immediately refund the dues deducted from Charging Party's wages upon receipt from AT&T.

Thus, CWA's efforts to claim "innocence" and thrust all of the blame on AT&T are irrelevant, incorrect and unsupported by the parties' Stipulation.<sup>5</sup>

**B. AT&T's arguments and defenses are properly before the Board.**

CWA simultaneously argues that *Lockheed*, 302 NLRB 322, and *National Oil Well*, 302 NLRB 367, are not at issue in this case, and, inconsistently, that those cases control the outcome of this matter. *See* CWA Br. 8 n.3 & 12 n.5.

With respect to the former, CWA's contends *Lockheed* and *National Oil Well* are not part of the General Counsel's theory of the complaint and therefore are not properly before the Board. This argument is misplaced for at least three reasons. First, AT&T is the *respondent* in this matter and therefore is entitled to argue any theory *against* the General Counsel. AT&T is not bound by

---

<sup>5</sup> With respect to the Stipulation, CWA claims the National Right to Work Foundation entered into the Stipulation on behalf of Charging Party. CWA Br. at 5 n.1. This assertion is purposefully false. Charging Party is represented by the undersigned retained counsel who are acting on her behalf. The National Right to Work Foundation is a private corporation that is not party to this case, nor has it entered into any agreement or stipulation on behalf of Charging Party.

the General Counsel’s theory of the case in presenting its defense. AT&T could have many reasons for inserting this alternative argument in its defense. For example, AT&T may believe its *Lockheed* and *National Oil Well* argument could inure to its benefit with respect to the type of remedy and/or its retroactivity. Second, there are certainly no “notice” concerns with regard to AT&T’s arguments about *Lockheed* and *National Oil Well*, as AT&T is the *respondent* in the case rather than the charging party. Third, AT&T’s argument *is* related to the General Counsel’s theory of the case, as shown by CWA’s assertion that *Lockheed* and *National Oil Well* control its outcome.

CWA’s assertion that *Lockheed* and *National Oil Well* control the outcome of this case shows why the Board is entitled to review the propriety of those cases as it weighs AT&T’s defensive arguments. And, if the Board chooses to revisit those cases, Charging Party agrees with AT&T that they are contrary to the Act and the plain language of Section 302 and should be overturned, for the reasons discussed *infra* pp. 2–3 and in her Brief on the Merits, Charging Party Br. at 5–17.

**C. CWA’s arguments for rejecting Charging Party’s checkoff revocations are un-persuasive.**

CWA’s reliance on *Smith Food and Drug*, 366 NLRB No. 138 is misplaced.<sup>6</sup> As discussed in detail in Charging Party’s Brief, that case was poorly litigated by the then-General Counsel, leading to decisions that side stepped the “hot potato” in the room: whether *Frito-Lay* was wrongfully decided. Charging Party Br. at 9–11; *see also Stewart v. NLRB*, 851 F.3d 21, 32 (D.C. Cir. 2017) (Silberman, J., concurring in part and dissenting in part) (“This case is a hot potato. It is a straightforward dispute over the proper interpretation of a criminal statute, section 302 of the Labor Management Relations Act, 29 U.S.C. § 186, and the relationship between that statute and section 8 of

---

<sup>6</sup> Charging Party refers to this case as *Fry’s Food Stores* in her Brief on the Merits.

the National Labor Relations Act.”). Both the D.C. Circuit majority and the Board on remand avoided this question. The Stipulation in this case allows the Board to address this issue head-on.

CWA also downplays the decision in *Anheuser-Busch, Inc. v. Teamsters, Local 822*, 584 F.2d 41 (4th Cir. 1978), where a court of appeals did not duck this issue. CWA intimates that *Anheuser-Busch* a lone and errant decision, CWA Br. at 9 n.4, though it admits that “the Fourth Circuit Court did find that 302(c)(4) ‘guaranteed employees the right to revoke their checkoff authorizations at will during the hiatus between collective bargaining agreements.’” *Id.* The Fourth Circuit’s correct holding in *Anheuser-Busch* cannot be reconciled with the Board’s holding in *Frito-Lay*.

CWA also relies on non-binding General Counsel Advice Memoranda, but such memoranda are neither precedential authority nor binding on the Board or even the General Counsel. *See Fun Striders, Inc.*, 250 NLRB 520, 520 n.1 (1980); *Midwest Tele., Inc.*, 343 NLRB 748, 762 n.21 (2004); *Coral Harbor Rehab. & Nursing Ctr.*, No. 22-CA-167738, 2017 WL 3115758, n.13 (ALJD July 13, 2017). These memoranda originate from the Division of Advice, a branch of the NLRB answerable to the General Counsel, not the other way around. *See* Organizational Chart, NLRB, <https://www.nlr.gov/about-nlr/who-we-are/organization-chart>. To reinforce the obvious, federal courts give no weight to the pre-adjudication actions of the General Counsel, including Advice Memoranda or similar decision letters that refuse to issue complaints. *See, e.g., Warehousemen’s Union Local No. 206 v. Continental Can Co.*, 821 F.2d 1348, 1351 (9th Cir. 1987) (General Counsel’s “refusal to issue a complaint does not act as res judicata . . . [and] no collateral estoppel effect attaches to such refusal.”); *Courier-Citizen Co. v. Boston Electrotypers Union No. 11*, 702 F.2d 273, 277 n.6 (1st Cir. 1983) (“[T]he Regional Director’s refusal to issue a complaint does not collaterally estop the charging party . . . .”); *Conkle v. Jeong*, 73 F.3d 909, 915 (9th Cir. 1995)

(Where the General Counsel refuses to issue a complaint, court “will not defer to a naked no-action decision.”); *Black v. Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 586 (6th Cir. 1994) (same).

Specifically, CWA resorts to dredging up a Division of Advice Memo from 35 years ago: *Southwestern Bell Telephone Company*, No. 17-CA-12624, 1985 WL 54651, at \*1 (NLRB GC Sept. 27, 1985). However, to the extent that memorandum is relevant, it has been superseded by actual Board adjudications in a variety of contexts, such as *Valley Hospital Medical Center*, 368 NLRB No. 139 (Dec. 16, 2019), *Lincoln Lutheran*, 362 NLRB 1655, and *Metalcraft of Mayville, Inc.*, 367 NLRB No. 116.

In defense of Charging Party’s and the General Counsel’s argument that Michigan’s Right to Work law was a changed circumstance allowing Charging Party to revoke her checkoff upon resignation, CWA cites another General Counsel Advice Memorandum, *Teamsters Local No. 406 (Pioneer Resources, Inc.)*, 07-CB-137758 (NLRB GC Feb. 19, 2015). CWA Br. at 12. CWA argues that this advice memorandum “forecloses” the General Counsel’s and Charging Party’s argument. *Id.* However, to the extent this “advice” is of any value, it is superseded by the General Counsel’s decision to move forward with the litigation of this case.

Perhaps most importantly, CWA’s weak citation of this Advice Memorandum ignores the two most precedential decisions directly on point: *Penn Cork & Closures, Inc.*, 156 NLRB 411 (1965), and *Metalcraft of Mayville, Inc.*, 367 NLRB No. 116 (Apr. 17, 2019). Taken together, those cases stand for the proposition that passage of a Right to Work law—just like a successful deauthorization under NLRA Section 9(e)—directly calls into question the voluntariness of the checkoff’s signing. *NLRB v. Penn Cork & Closures, Inc.*, 376 F.2d 52, 55 (2d Cir. 1967) (“[W]here a union shop exists under the authority of 8(a)(3), it is logical to infer that employees authorizing dues checkoffs do so under its influence. This inference is particularly compelling where, as here, the

collective bargaining agreement obliges the company to dismiss a worker [who fails to join or pay dues.]”). Applying these cases, the Board should hold that checkoffs signed under force of a union security clause become revocable at will once a state passes a Right to Work law. This, rather than locking employees in, protects employee free choice.

**D. CWA’s arguments in favor of petty restrictions on checkoff revocations fail.**

CWA’s argument that Section 8 condones a requirement that employees use certified mail to communicate their checkoff revocations is risible, as that petty restriction has been rejected in numerous parallel contexts. *California Saw & Knife Works*, 320 NLRB at 236–37 (certified mail requirements for *Beck* objections unlawful); *Auto. Workers Local 449 (Nat’l Metalcrafters, Inc.)*, 285 NLRB 1189 (1987), *enforced in relevant part sub nom., UAW v. NLRB*, 865 F.2d 791 (6th Cir. 1989) (certified mail requirement to resign unlawful); *Local 58, IBEW (Paramount Industries, Inc.)*, 365 NLRB No. 30 (Feb. 10, 2017), *enforced*, 888 F.3d 1313 (D.C. Cir. 2018) (multiple union restrictions on the right to resign or revoke declared unlawful). CWA and AT&T’s only conceivable rationale for this requirement is to add hurdles to an already burdensome and extremely time-sensitive checkoff revocation process. They know that if an employee misses a “window” by even one day she is stuck paying dues for a whole year. Thus, the “certified mail only” requirement restrains and coerces employees in the exercise of their Section 7 rights, in violation of Section 8. This is especially true in the age of computers, faxes, and e-mail—modern communications conveniences to which CWA and AT&T surely have access.

CWA argues that the Sixth Circuit’s holding in *Ohlendorf v. UFCW Local 876*, 883 F.3d 636 (6th Cir. 2018) is applicable to this case. It is not. That case dealt exclusively with a union’s duty of fair representation towards its members—a standard which (in current form) allows for a wide

range of union conduct that would on its face appear unacceptable. *Id.* at 643–44.<sup>7</sup> This case is not a duty of fair representation case—it is not against a union at all. Thus, the standard outlined in *Ohlendorf* for suits against unions is inapplicable here in a case against AT&T.

Interestingly, CWA makes no effort to defend the “one letter per envelope” rule, presumably because it knows that such a rule is a direct assault on employees’ protected concerted activity. *NLRB v. City Disposal Sys. Inc.*, 465 U.S. 822, 830 (1984) (“The term “concerted activit[y]” . . . clearly enough embraces the activities of employees who have joined together in order to achieve common goals.”); *see also California Saw & Knife Works*, 320 NLRB at 236-37 (striking down a union’s “one letter per envelope” rule for *Beck* objectors).

Finally, CWA’s argument that AT&T (and it) are saved by a “savings clause” in their CBA is meritless. Here, both the CBA and the dues checkoff forms worked together to burden employees who simply wish to exercise their Section 7 rights and revoke their checkoffs. No savings clause will “save” onerous procedures that exist simply to make employees’ lives more difficult. *Felter*, 359 U.S. 326; *Newport News Shipbuilding & Dry Dock Co.*, 253 NLRB 721 (1980); *Atlanta Printing Specialties*, 523 F.2d 783; *Local 58, IBEW*, 365 NLRB No. 30. CWA yet again confuses who this case is against. It states: “Neither the Local nor the International has ever sought to vary from the terms of CP’s checkoff authorization.” CWA Br. at 15. Even if true, this is irrelevant, as the “CB” case has been settled and closed. *This* case is not against CWA or any of its affiliates. It is against AT&T, which specifically enforced the terms of the CBA against Charging Party. *See* Exs. 7–8.

---

<sup>7</sup> *Ohlendorf*’s second claim, a Section 302 claim, was dismissed on other grounds.

**E. CWA's Brief proves the inappropriateness of its interference in this case, and why intervention should be denied.**

The content of CWA's Brief proves that its participation is unnecessary and inappropriate in this case.

First, throughout, CWA engages in an analysis of how *it* and its affiliates did not violate the Act. But CWA's liability is not at issue. Whether or not CWA or its affiliates engaged in unlawful behavior is irrelevant to the question of whether AT&T violated the Act. In essence, CWA's brief attacks a straw man—whether or not CWA violated the Act—and largely avoids the operative question in this case: did AT&T violate Section 8(a) through its conduct?

Second, CWA's Motion to Intervene "most importantly" argued that the remedy sought—re-scission of unlawful portions of the AT&T-CWA CBA—was inappropriate without making CWA a party, citing *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1938). CWA Mot. to Intervene, at 6. CWA's reply briefs on its Motion to Intervene similarly argued that "the crux" of its Motion to Intervene concerned the General Counsel's proposal to rescind portions of the CBA. CWA Reply to AT&T, at 2; CWA Reply to Charging Party, at 2. However, in its "brief on the merits," CWA blames AT&T for certain conduct, thereby supporting a finding of a violation. Similarly, CWA does not refute the allegation that its requirement that checkoff revocations be sent individually violates the Act. Thus, on at least one point CWA appears to concede that the checkoff and the CBA violate the Act. If that is true and the purported reason for CWA's intervention is the choice of remedy, surely CWA would have made some argument against the General Counsel's remedial request to rescind the unlawful CBA provisions. But it did not. That omission makes it clear that CWA's rationale for its Motion to Intervene was a mere pretext and should be rejected.

## CONCLUSION

For the foregoing reasons and those stated in Charging Party's Brief on the Merits, the Board should overturn its erroneous *Frito-Lay* decision and adhere to the text and plain meaning of Section 302(c)(4). In so doing, the Board should find that AT&T unlawfully rejected Charging Party's multiple checkoff revocations. Additionally, the Board should hold that Charging Party's checkoff was validly revoked pursuant to the rationale outlined in *Penn Cork*. Finally, the Board should find AT&T's maintenance and/or enforcement of unduly burdensome checkoff revocation mailing requirements unlawful. All of these acts and omissions should be found to violate Section 8(a).

Respectfully submitted,

/s/ Alyssa K. Hazelwood

Alyssa K. Hazelwood

Glenn M. Taubman

c/o National Right to Work Legal

Defense Foundation, Inc.

8001 Braddock Road, Suite 600

Springfield, VA 22160

Telephone: (703) 321-8510

Fax: (703) 321-9319

akh@nrtw.org

gmt@nrtw.org

Date: September 22, 2020

## CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2020, the foregoing Answering Brief was e-filed with the NLRB Executive Secretary, and a copy of that document was served via e-mail on the following:

Stephen J. Sferra  
Jeffrey Seidle  
Littler Mendelson, P.C.  
1100 Superior Avenue, 20th Floor  
Cleveland, OH 44114  
Telephone: (216) 696-7600  
Email: [ssferra@littler.com](mailto:ssferra@littler.com)  
[jseidle@littler.com](mailto:jseidle@littler.com)

*Counsel for AT&T Services, Inc.*

Renee McKinney  
Rana Roumayah  
Counsel for the General Counsel  
National Labor Relations Board, Region 7  
477 Michigan Avenue, Room 05-200  
Detroit, MI 48226  
Telephone: (313) 335-8081  
Email: [renee.mckinney@nlrb.gov](mailto:renee.mckinney@nlrb.gov)  
[rana.roumayah@nlrb.gov](mailto:rana.roumayah@nlrb.gov)

*Counsel for General Counsel*

Matthew R. Harris  
CWA District 4 Counsel  
20525 Center Ridge Rd., Suite 700  
Cleveland, Ohio 44116  
Telephone: (440) 333-6363  
E-mail: [mrharris@cwa-union.org](mailto:mrharris@cwa-union.org)

*Counsel for the Proposed Intervenor*

s/ Alyssa K. Hazelwood  
Alyssa K. Hazelwood