

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

DATE: February 8, 2016

TO: Margaret J. Diaz, Regional Director
Region 12

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Teamsters Local 385 (Walt Disney World) 536-2548
Case 12-CB-149945 536-2560
536-2561
Teamsters Local 385 (Walt Disney World) 536-2562
Case 12-CB-149949

Teamsters Local Hall 385 (Walt Disney World)
Case 12-CB-152912

International Brotherhood of Teamsters,
Local 385 (United Parcel Service, Inc.)
Case 12-CB-159647

These cases were submitted for advice as to whether the Union violated Section 8(b)(1)(A) in its handling of employee efforts to revoke their dues checkoff authorizations. We conclude that the Union breached its duty of fair representation by failing to respond to premature revocation requests, which also contained requests for information necessary to properly revoke such authorizations. We likewise conclude that the Union breached its duty of fair representation by maintaining a practice of disregarding telephone and in-person requests for information about or assistance with the dues revocation process, and by failing to honor the untimely revocations two Charging Parties sent after their window periods closed. Finally, we conclude that the appropriate remedy for these Section 8(b)(1)(A) violations is for the Union to refund employees' dues effective as of the date their revocation window opened because the employees would have timely revoked had the Union responded to their revocation requests and other inquiries.

FACTS

International Brotherhood of Teamsters, Local 385 ("Union") represents certain employees of Walt Disney World ("Disney") and the United Parcel Service, Inc. ("UPS") in Florida. The relevant collective-bargaining agreements, which expire in 2019 and 2018, respectively, both contain a dues checkoff clause requiring the

employers to remit dues upon written authorization by employees. The four Charging Parties each signed dues checkoff authorizations that by their terms were irrevocable for one year or the term of the applicable collective-bargaining agreement, whichever was sooner, and were subject to automatic renewal unless the employee provided written notice during a certain window before any periodic renewal date. The Charging Parties who worked for Disney (Charging Parties A, B, and C) had to revoke “not more than twenty (20) days and not less than ten (10) days” prior to their periodic renewal dates. The Charging Party who worked for UPS (Charging Party D) had to revoke “at least sixty [60] days, but not more than seventy-five [75] days” prior to his periodic renewal date. The dues checkoff authorizations also expressly stated that they were not contingent on “my present or future membership” in the Union.

The Union’s Secretary-Treasurer handles all checkoff revocation requests and inquiries pertaining to such revocations. If an employee’s written request for revocation is dated within the applicable window, the Secretary-Treasurer processes the request and notifies the employer accordingly. If an employee’s written request is outside the applicable window, the Secretary-Treasurer prepares a form letter notifying the employee of the date he or she signed the authorization form and quoting language setting forth the revocation window. The Secretary-Treasurer asserts that he encloses a copy of the signed checkoff authorization form with each response letter. The Secretary-Treasurer then makes a copy of the Union’s response for its files, encloses the original in an envelope, meters the envelope, and places it in the bin for outgoing mail. The Union does not appear to retain any documentation showing that its responses were, in fact, mailed, such as certified mail receipts. The Secretary-Treasurer admits that he typically does not respond to employees who leave voicemail messages indicating that they want to cancel their dues because the authorization form requires that such requests be in writing. He claims that if someone specifically asks for a call back, he returns the call.

Charging Party A: Case 12-CB-149945

Charging Party A signed a service fee authorization form on March 7, 2000. Thus, she had a window to revoke her authorization from February 15 through 25 each year that a collective-bargaining agreement was in effect.

Between August 2014 and November 2014, Charging Party A sent five letters to the Union resigning her membership and ordering the Union to cease enforcing dues checkoff. In each letter, she requested that the Union inform her of the process necessary to revoke dues checkoff, in the event the Union considered her revocation ineffective. She specifically requested the applicable window period and a copy of her authorization form. The Union contends that it responded to three of Charging Party A’s letters, together with copies of her authorization card. Charging Party A denies receiving any response from the Union during this time frame.

On December 8, 2014, Charging Party A visited the Union hall to inquire about the status of her letters and to obtain a copy of her dues authorization form. The Union's bookkeeper indicated that the Secretary-Treasurer was not in the office. The Charging Party requested a copy of her authorization form and explained that she had not received a response to several previous resignation letters. The bookkeeper collected Charging Party A's contact information and told her that the Secretary-Treasurer would call her. About two days later, Charging Party A left a voicemail for the Secretary-Treasurer requesting that he call her concerning her requests to resign and cease paying dues. According to Charging Party A, the Secretary-Treasurer never contacted her.

Charging Party A sent another letter to the Secretary-Treasurer dated March 9, 2015. Her letter asserted that her resignation (i.e. revocation) request was timely based on the anniversary date supplied to her by Disney, which was incorrect. She again requested that the Union inform her of the steps necessary to revoke her checkoff authorization if the Union rejected this attempt at revocation, but she did not specifically request the window period and a copy of her authorization form on this occasion, as she had done in the past. The Union responded by letter dated March 10, supplying the date she signed the authorization form and the language setting forth the applicable window period. Charging Party A admits receiving this correspondence, but denies that the Union enclosed a copy of her authorization form.

Charging Party B: Case 12-CB-149949

Charging Party B signed a service fee authorization form on January 28, 2007. Thus, she had a window to revoke her authorization from January 8 through 18 each year that a collective-bargaining agreement was in effect.

By letter dated November 13, 2014, Charging Party B resigned from the Union, but mistakenly requested that her union fee be limited to collective bargaining, contract administration, and grievance adjustment rather than cancelled altogether. Charging Party B thought she was requesting the cessation of dues, and did not realize that the form letter she used was not appropriate for a right-to-work state such as Florida. Her letter did not contain any requests for information, but it asked for a prompt reply from the Union. The Union contends that it treated her letter as a request to revoke dues checkoff, and replied via letter dated November 17, 2014, providing her with her anniversary date, a description of the applicable window period, and a copy of her authorization form. Charging Party B denies receiving the Union's correspondence.

On November 20, 2014, Charging Party B visited the Union hall to inquire about revoking her dues and to obtain a copy of her checkoff authorization. She spoke with a business agent, who informed her that the Secretary-Treasurer was the only one who could handle her request. Charging Party B left the Union hall and immediately left a voicemail message for the Secretary-Treasurer indicating that she

wished to resign and requesting a copy of her authorization form. The following day, she left identical messages for the Secretary-Treasurer and the bookkeeper, but never received a return call.

On December 1, 2014, Charging Party B left a message for the Secretary-Treasurer indicating that she would visit the Union hall the next day to obtain her checkoff authorization card and any other information she needed to cease paying dues. When she visited the hall the following day, someone stopped her and told her that the Secretary-Treasurer was not in the office. She proceeded to his office anyway and found him there. She requested a copy of her dues authorization form, but he refused to produce it at that time. The Secretary-Treasurer instead took her contact information and promised to mail her a copy within a few days. Charging Party B never received a copy of her authorization form in response to this inquiry.

Charging Party B delivered two letters in late February 2015 resigning her membership and requesting the cessation of dues. The Union responded shortly thereafter with its form letter, which included her anniversary date and her window period, and enclosed a copy of her authorization form. Charging Party B admits receiving the Union's response, but alleges that she did not receive a copy of the form. Her February 2015 letters, however, did not request a copy of her checkoff authorization form.

Charging Party C: Case 12-CB-152912

Charging Party C signed a service fee authorization form on April 20, 2013. Thus, he had a window to revoke his authorization from March 31 through April 10 each year that a collective-bargaining agreement was in effect.

By letter dated March 20, 2015, Charging Party C informed the Union that he wished to terminate his membership and discontinue his dues deduction. This letter did not contain any requests for information. The Union contends that it responded by letter dated March 27, 2015, providing Charging Party C with his anniversary date, window period, and a copy of his authorization form. Charging Party C denies receiving this response.

Over the course of the next two months, Charging Party C left several telephone messages for the Secretary-Treasurer, as well as a business agent. Neither Union official returned his calls.

Charging Party D: Case 12-CB-159647

Charging Party D signed a checkoff authorization form on August 28, 2008. Thus, he had a window to revoke his authorization from June 14 through 29 each year that a collective-bargaining agreement was in effect.

By letter dated May 18, 2015, Charging Party D informed the Union of his intent to resign his membership and requested that the Union cease collecting dues. The letter also requested the procedure for cancelling dues and the window period for doing so, in the event the May 18 notice was ineffective. Charging Party D believed that his letter was timely, however he miscalculated the window period by using business days instead of calendar days. The Union contends that it responded by letter dated May 22, 2015, which included Charging Party D's anniversary date and window period. Charging Party D denies receiving the Union's correspondence.

About two months later, Charging Party D called the Secretary-Treasurer and President several times, but never received a return call. In his voicemail messages, Charging Party D indicated that he had sent a letter requesting the cessation of dues but had not received a reply from the Union.¹

ACTION

We conclude that the Union violated Section 8(b)(1)(A) by failing to respond to premature revocation requests and requests for information pertaining to the revocation process, by disregarding telephone and in-person requests for information about or assistance with that process, and by failing to honor the untimely revocations Charging Parties A and B sent after their window periods closed. Furthermore, we conclude that the appropriate remedy is for the Union to refund employees' dues effective as of the date their revocation window opened because employees would have timely revoked had the Union responded to their revocation requests and other inquiries.

The rules governing revocation of dues checkoff start with Section 302(c)(4) of the Act. Section 302(c)(4) states in relevant part that an employer may deduct and remit an employee's membership dues to a union upon a written authorization from the employee, "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[.]" The Board has interpreted Section 302(c)(4) to guarantee employees two distinct opportunities to revoke a dues checkoff authorization: (1) at least once a year, and (2) upon termination of the collective bargaining agreement.²

¹ (b) (5)

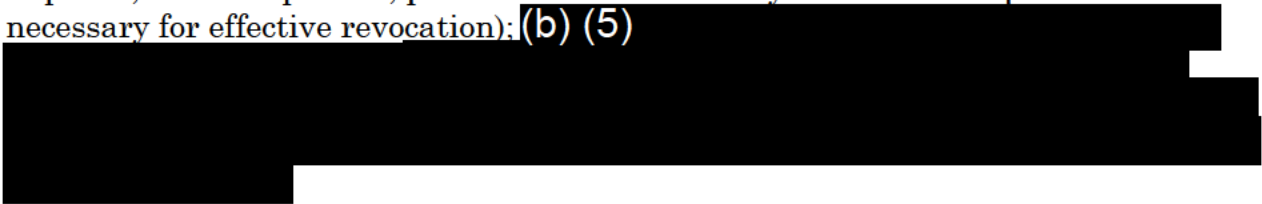
² *Atlanta Printing Specialties*, 215 NLRB 237, 237 (1974) (determining that union could not negate second of two distinct revocation opportunities by executing successor agreement prior to previous contract's termination date and claiming that revocation window at termination applied to the new agreement rather than the previous one), *enforced*, 523 F.2d 783 (5th Cir. 1975).

It is well established that “inherent in a union’s duty of fair representation is an obligation to deal fairly with an employee’s request for information” in matters affecting his employment.³ It is also settled law that dues checkoff is a matter affecting employment.⁴ Therefore, a union breaches its duty of fair representation when it either refuses or fails to respond to an employee’s revocation request, refuses or fails upon request to provide information that is necessary to effect revocation, or otherwise creates obstacles to the employee’s exercise of the Section 7 right of revocation.⁵ In circumstances where a union impedes an employee from submitting an effective revocation, the failure to honor the employee’s attempted revocation further violates the Act.⁶

³ *Local No. 324, Operating Engineers*, 226 NLRB 587, 587 (1976) (holding that union breached its duty of fair representation by failing to respond to employee’s request for information regarding his position on out-of-work register).

⁴ *Lincoln Lutheran of Racine*, 362 NLRB No. 188, slip op. at 2 (Aug. 27, 2015) (“dues checkoff is a matter related to wages, hours, and other terms and conditions of employment . . . and is therefore a mandatory subject of bargaining”).

⁵ See *Hughes Aircraft Company*, 164 NLRB 76, 77-78 & n.5 (1967) (adopting Trial Examiner’s finding that union violated Section 8(b)(1)(A) where union steward intentionally misled employee as to proper dates to submit dues checkoff revocation and employee relied on misleading information); *Electrical Workers, Local 66*, 262 NLRB 483, 486 (1982) (finding that union violated Section 8(b)(1)(A) when it frustrated charging party’s attempts to revoke dues checkoff authorization under union’s own procedures where union’s assistant business manager rebuffed charging party’s requests for assistance on at least three occasions). See also *United Food & Commercial Workers Local 1529 (Kroger Co.)*, Case 15-CB-123054, Advice Memorandum dated June 19, 2014, at 7-8 (concluding that union violated Section 8(b)(1)(A) by failing to timely explain the dues revocation process and timeframe as requested); *UNITE HERE*, Case 11-CB-4152, Advice Memorandum dated Oct. 6, 2010, at 3 (stating unions have duty to timely respond to employee revocation requests, and if requested, provide their anniversary dates and the procedure necessary for effective revocation); (b) (5)



⁶ See *Hughes Aircraft Company*, 164 NLRB at 77-78 & n.5 (holding union violated Section 8(b)(1)(A) by refusing to honor employee’s checkoff revocation that was untimely because he relied upon steward’s intentional misrepresentations regarding

Applying these principles here, we conclude that the Union breached its duty of fair representation in handling employee efforts to revoke their dues checkoff authorizations in several respects. First, we conclude that the Union failed or refused to respond to employees' premature requests to cease paying dues. All of the Charging Parties sent at least one letter prematurely revoking their checkoff authorizations, and each claims that the Union failed to respond to their request.⁷ Although the Union has produced copies of letters it purportedly sent the Charging Parties, it has not submitted proof of mailing. Given that multiple Charging Parties consistently maintain that they never received any of these response letters, we cannot assume the Union actually mailed these letters in the normal course of business. Instead, we credit the Charging Parties and conclude that the Union did not, in fact, respond to their premature requests for revocation.

Having concluded that the Union did not send the purported response letters, it follows that the Union failed to provide pertinent information to Charging Parties A and D upon written request. In their premature revocation letters, each of these Charging Parties requested information concerning the revocation process and the window period during which they could effectuate revocation. In addition, Charging Party A specifically requested a copy of her checkoff authorization card. Crediting the Charging Parties, we find that the Union failed to provide the requested information.

We likewise find that the Union breached its duty of fair representation by failing to respond to telephone and in-person requests for information and assistance concerning revocation. Each of the Charging Parties left messages for the Secretary-Treasurer and other Union officials either in-person or via voicemail on multiple occasions, and not a single employee received a return call or letter, as requested. The Secretary-Treasurer admits that he does not respond to telephone requests for dues revocations. Although he claims to return phone calls upon request, it is evident

the relevant dates); *Electrical Workers, Local 66*, 262 NLRB at 486 (finding union violated Section 8(b)(1)(A) and (2) by refusing to give effect to employee's revocation where his attempts to take the steps necessary for revocation were repeatedly frustrated by the union).

⁷ Although Charging Party B's November 13, 2014 resignation letter mistakenly requested merely a reduction in dues rather than the cessation of dues, we find that the Union's failure to respond to her letter violated Section 8(b)(1)(A) since she asked for a reply and both Charging Party B and the Union understood that she was attempting to revoke her dues authorization. *Cf. Electrical Workers, Local 66*, 262 NLRB at 485 (where employee and union used terms meaning resignation and revocation interchangeably, both parties understood that employee was seeking to end both membership and financial contributions).

from the sheer number of unanswered calls and visits that he has a practice of only responding to written revocation requests and disregarding all non-written inquiries. Such a practice creates a significant and unwarranted obstacle for employees attempting to revoke their checkoff authorizations. Such a practice is especially obstructive where employees never received a written reply to their revocation requests, as was the case for all of the Charging Parties, and where employees do not understand how to interpret the window period, as was the case for Charging Party D. The fact that the Charging Parties' inquiries were not in writing is immaterial, since the Board has found unlawful obstruction in circumstances where an employee seeks assistance in-person and over the phone.⁸

Furthermore, we find that the Union breached its duty of fair representation by failing to honor the untimely revocations that Charging Party A and B sent after their window periods closed. The Union caused them to miss their revocation windows by failing to respond appropriately to their earlier inquiries. In these circumstances, the Union violated Section 8(b)(1)(A) by failing to honor their belated attempts to revoke.⁹

Finally, we conclude that the appropriate remedy for all of the Charging Parties is for the Union to refund their dues as of the revocation window immediately following the Union's obstructive conduct. Had the Union fulfilled its responsibility to respond to the Charging Parties' premature revocation requests and to provide requested information and assistance, each Charging Party would have been able to revoke during their next escape window.¹⁰

⁸ See *Electrical Workers, Local 66*, 262 NLRB at 484, 486 (union frustrated employee's efforts to revoke where it rebuffed his in-person and telephone requests for assistance). See also *Teamsters, Local 498 (Loctite Corp.)*, Case 17-CB-2917, Advice Memorandum dated Sept. 19, 1984, at 2-3 (union violated Section 8(b)(1)(A) by refusing to explain the revocation procedure during telephone call with employee).

⁹ *Electrical Workers, Local 66*, 262 NLRB at 486.

¹⁰ Since the essence of the violation is that the Union inadequately responded to premature revocation requests, and not that the Union improperly refused to accept premature revocation requests, the remedy should not require a refund of dues from the date of the premature revocations. A remedy refunding dues as of the date of the window period will make the employees whole without giving them a windfall. Compare *id.* at 483-84, 486-87 (ordering a make-whole remedy as of start of window period where union frustrated employee's timely efforts to effectuate revocation), with *Hughes Aircraft Company*, 164 NLRB at 77-78 & n.5 (ordering the union to reimburse employee for all sums improperly deducted, that is, dues collected after the union refused to honor employee's untimely checkoff revocation, which was one day late due to steward's misleading advice).

Accordingly, the Region should issue complaint in each of these cases, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by failing to respond to the Charging Parties' premature revocation requests and by failing to supply information or assistance with the revocation process upon request. In cases 12-CB-149945 and 12-CB-149949, the Region should also allege that the Union violated Section 8(b)(1)(A) by failing to honor the untimely revocations Charging Parties A and B sent after their window periods closed.

/s/
B.J.K.

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(b) (6), (b) (7)(C)