

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

Advice Memorandum

DATE: July 29, 2019

TO: Nancy Wilson, Acting Regional Director
Region 5

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

SUBJECT: Laborers' Local 980
(Tutor-Perini Corp.)
Case 05-CB-229670

536-2556
775-8700

The Region submitted this case for advice on whether the Union violated Section 8(b)(1)(A) by maintaining a provision in its dues checkoff authorization card that waives the right of signatory employees to resign their Union membership while the authorization is in effect. We conclude that the Union violated Section 8(b)(1)(A) by maintaining the provision because it unlawfully requires unit employees to agree to an undue restriction on their right to resign membership, and imposes the restriction when they may only want to waive their distinct right to cease dues checkoff.

FACTS

Tutor-Perini Corp. ("the Employer") has a collective-bargaining agreement with Laborers' Local 980 ("the Union") covering the Employer's laborers, carpenters, and crane operators working on a highway improvement project in Norfolk, Virginia. On October 23, 2017, the Charging Party began working for the Employer. On the Charging Party's first day of work, (b) (6), (b) (7)(C) signed two Checkoff Authorization and Assignment Cards that were given to (b) (6), (b) (7)(C) by the Union. Pursuant to the first card, the Charging Party authorized the deduction and remittance of dues to the Union's regional council. The second card authorized the deduction and remittance of dues to the Union and stated, in pertinent part:

This authorization shall be irrevocable for a period of one (1) year, or until termination of the collective bargaining agreement in existence between my Employer and the Union, whichever occurs sooner; and I agree and direct that this authorization shall be automatically renewed and shall be irrevocable for successive periods of one (1) year each, or for the period of any subsequent agreement between my Employer and the Union, whichever shall be shorter, unless written notice is given by me to my Employer and the Local Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective

bargaining agreement between my Employer and the Union, whichever occur s sooner. *For the effective period of this checkoff authorization and assignment, I hereby waive any right I may have to resign my union membership.* Furthermore, this checkoff authorization shall continue in accordance with the above renewal and revocation provisions irrespective of my membership in the Union.¹

Virginia has a right-to-work statute that prohibits the inclusion of a union-security clause in collective-bargaining agreements.²

On October 4, 2018, the Charging Party sent the Union a letter to resign membership in the Union and to revoke [REDACTED] dues authorization form.³ The Union promptly accepted the Charging Party's timely resignation and notified the Employer to stop deducting and remitting dues. Beginning October 7, 2018, the Employer no longer deducted dues from the Charging Party's paycheck.

ACTION

We conclude that the Union violated Section 8(b)(1)(A) by maintaining the provision because it unlawfully requires unit employees to agree to an undue restriction on their right to resign membership, and imposes the restriction when they may only want to waive their distinct right to cease dues checkoff.⁴

Section 8(b)(1)(A) provides that a union commits an unfair labor practice if it "restrain[s] or coerce[s] employees in the exercise" of their Section 7 rights, which

¹ Emphasis added.

² See generally Va. Code Ann. §40.1-58 (2019).

³ The Region should determine whether the Union provides an alternative means, other than its dues checkoff authorization form, for employees to become Union members, and whether the Charging Party became a member through means other than by signing this form.

⁴ If the Region determines that the Union applied the challenged provision in its dues checkoff authorizations to establish the Charging Party's Union membership in the first place, and/or that it routinely uses the form for that purpose, the Region should allege that as an independent violation of Section 8(b)(1)(A). See cases cited in note 18, below.

include the right to refrain from joining or assisting labor organizations.⁵ In interpreting that statutory provision, the Board has held that unions cannot unilaterally place any meaningful restrictions on the right of their members to resign from union membership because, among other reasons, “when a union seeks to delay or impede a member’s resignation, it directly impairs the employees’ Section 7 right to resign or otherwise refrain from union or other concerted activities.”⁶ In *Pattern Makers’ League v. NLRB*, the Supreme Court upheld the Board’s interpretation of Section 8(b)(1)(A) and agreed that the policy of “voluntary unionism” underlying the Act prohibits internal union rules restricting a member’s right to resign.⁷ Subsequently, the Board consistently has found that unions violate Section 8(b)(1)(A) by maintaining constitutional provisions, bylaws, and other internal rules impeding employees’ right to resign because they unlawfully coerce employee support for a union.⁸

Although the Board has consistently held that a union may not lawfully impose unilateral restrictions on employees’ Section 7 right to resign their union

⁵ See, e.g., *Pattern Makers’ League v. NLRB*, 473 U.S. 95, 100–01 (1985) (upholding Board’s decision that employees have a fundamental right under Section 7 to resign their union membership at any time, and that Section 8(b)(1)(A) prohibits unions from unilaterally placing any substantive restrictions on that right).

⁶ *Electrical Workers IBEW Local 58 (Paramount Industries)*, 365 NLRB No. 30, slip op. at 2 (Feb. 10, 2017) (quoting *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1333 (1984), approved by *Pattern Makers’ League v. NLRB*, 473 U.S. at 103 & n.13, 104-05)), enforced, 888 F.3d 1313 (D.C. Cir. 2018). See also *Sheet Metal Workers Local 73 (Safe Air)*, 274 NLRB 374, 375 (1985) (clarifying that *Neufeld Porsche-Audi* was “not meant to be limited to restrictions on resignation during a strike or lockout,” but applied to “any restrictions”), enforced, 840 F.2d 501 (7th Cir. 1988).

⁷ See *Pattern Makers’ League v. NLRB*, 473 U.S. at 104–05.

⁸ See, e.g., *Electrical Workers IBEW Local 58 (Paramount Industries)*, 365 NLRB No. 30, slip op. at 2 (finding union violated Section 8(b)(1)(A) by maintaining newly-announced resignation policy requiring members either to present written resignations in-person with photo identification at the union’s hall or make other arrangements to verify their identity because policy imposed an unlawful restriction on their right to resign union membership). Cf. *Auto Workers Local 148 (McDonnell-Douglas)*, 296 NLRB 970, 971 (1989) (union may lawfully require a member who wishes to resign to put the resignation in writing and send it to a designated union officer)

membership, it has not directly resolved whether employees may voluntarily waive their right to resign from a union by individual agreement.⁹ Assuming that employees may do so, the Act's policy of "voluntary unionism" recognized in *Pattern Makers'* directs that unions cannot place too great a restriction on the ability of employees to revoke such waivers.¹⁰ The Union's policy here, which waives an employee's right to resign in perpetuity subject to short window periods, represents an undue restriction that is inconsistent with voluntary unionism. Indeed, the Board has held that unions have violated Section 8(b)(1)(A) by maintaining constitutional provisions that permit membership resignations only during a window period.¹¹ It also has held that unions violate Section 8(b)(1)(A) by maintaining voluntary agreements of short duration that do not permit employees to escape them and exercise their right to resign from union membership.¹²

The Union here attempts to make its waiver policy appear reasonable by linking it to the procedure for revoking dues checkoff authorizations. But the Board has made

⁹ Compare *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328 n.25 (1991) ("we need not, and do not, decide whether or not an employee may . . . agree to an enforceable waiver of the right to resign for a limited period"), with *Sheet Metal Workers Local 9 (Concord Metal)*, 297 NLRB 86, 89-90 (1989) (finding union violated Section 8(b)(1)(A) by maintaining and enforcing strike support agreements that employees voluntarily entered because they restricted the employees' right to resign from the union and refrain from engaging in a strike; "even a clear and unmistakable waiver will not be permitted, where the union has an apparent self-interest in perpetuating itself" (quoting *Sheet Metal Workers Local 29 (Metal-Fab)*, 222 NLRB 1156, 1160 (1976))).

¹⁰ See also *Scofield v. NLRB*, 394 U.S. 423, 430 (1969) (stating unions may lawfully enforce an internal rule only when, among other things, union members are "free to leave the union and escape the rule").

¹¹ See, e.g., *Auto Workers Local 449 (National Metalcrafters)*, 283 NLRB 182, 182 n.1 (1987) (finding, among other things, provision in international union's constitution restricting submission of membership resignations to a ten-day period to violate Section 8(b)(1)(A)), enforced in relevant part, 865 F.2d 791, 796-97 (6th Cir.), cert. denied, 493 U.S. 818 (1989).

¹² See *Sheet Metal Workers Local 9 (Concord Metal)*, 297 NLRB at 90 (finding strike support agreements that expired at end of year and were effective for only an eight-week period unlawfully restricted the employees' rights to resign and refrain from engaging in a strike).

clear that “paying dues and remaining a union member can be two distinct actions.”¹³ Section 302(c)(4) of the Act expressly permits employees to enter dues checkoff authorizations by which they irrevocably assign the payment of union dues from an employee’s wages for a period not to exceed one year.¹⁴ In interpreting Section 302(c)(4), the Board has held that it is lawful for a union to impose window period requirements (at the end of that one year period), and to reject checkoff revocation requests initiated outside those window periods.¹⁵ However, the framework that Section 302(c)(4) establishes for waiving the right to refrain from assisting a union through checkoff, and revoking such a waiver, is specifically for dues checkoff authorizations and is not applicable to other Section 7 rights. In short, although unions may utilize dues checkoff authorizations that automatically renew each year absent employees revoking them during a window period, it does not follow that unions can use the same device to lock employees into the waiver of other Section 7 rights.

Moreover, a union’s intertwining of dues checkoff and waiver of membership resignation results in the latter not being voluntary. The Board has held that the policy of “voluntary unionism” underlying the Act should generally inform the right of employees to refrain from union activities.¹⁶ For example, in *Electrical Workers Local 2088 (Lockheed Space Operations)*, the Board confronted whether an employee’s union resignation also revoked his dues checkoff authorization where there was no applicable union-security clause. The Board found the union’s continued retention of

¹³ See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB at 328 (dues checkoff authorizations are not union-security devices because they do not impose union membership or support as a condition required for continued employment).

¹⁴ See 29 U.S.C. § 186(c)(4) (2012) (stating that employees’ written dues checkoff authorizations “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”).

¹⁵ See, e.g., *Smith’s Food & Drug Centers d/b/a Fry’s Food Stores*, 366 NLRB No. 138, slip op. at 2 (July 24, 2018) (“Pursuant to Section 302(c)(4), a union can limit revocability of checkoff authorizations to window periods (1) at least once every year, for example, around the anniversary of their signing, and (2) prior to the expiration of the applicable collective-bargaining agreement.”).

¹⁶ See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB at 328.

dues violated Section 8(b)(1)(A) because the dues checkoff authorization the employee had signed did not clearly indicate that dues would continue to be deducted from his paycheck post-resignation. Thus, he had not clearly and unmistakably waived the right to refrain from supporting the union when he was neither a member nor otherwise required to pay dues.¹⁷ And, if an employee not subject to a union-security requirement did not explicitly agree to have dues deducted post-resignation, “then the employee’s continued financial support of the union is not clearly ‘voluntary’” after resignation.¹⁸

Applying these principles here, even assuming employees could voluntarily waive the right to resign membership for some period of time, the Union violated Section 8(b)(1)(A) by imposing such a waiver on employees who may only have wanted to avail themselves of the Union’s dues checkoff process. Because the waiver is inextricably part of the Union’s dues checkoff authorization, employees are not voluntarily agreeing to that waiver, which violates the policy of “voluntary unionism” underlying the Act. Thus, employees with no union-security requirement, as is the case here, may nevertheless desire to financially assist the union representing them but not subject themselves to all the obligations attendant with full union membership. By including language in its dues checkoff authorization that restricts the right of signatory employees to resign, the Union does not allow those employees who may only want to financially assist the Union for its representational services to opt out of the restriction on resignation from membership. In short, the Union cannot bootstrap the resignation waiver into its dues checkoff authorization, and thereby make resignation subject to the checkoff’s revocation window period, without violating the voluntariness principle regarding union membership. By doing so, the Union is unlawfully coercing employees into a larger commitment to the Union than they may have desired, which violates Section 8(b)(1)(A).

¹⁷ *Id.* at 329.

¹⁸ *Id.* at 328. *See also Bellkey Maintenance Co.*, 270 NLRB 1049, 1056 (1984) (finding union violated Section 8(b)(1)(A) by requiring users of its exclusive hiring hall to sign dues checkoff authorization forms, which also served as the referral slips). *Cf. Communications Workers Local 1101 (New York Telephone Co.)*, 281 NLRB 413, 413, 417 (1986) (finding union violated Section 8(b)(1)(A) by using dual purpose membership-dues checkoff card as sole method by which employees could comply with union-security clause).

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) based on the analysis above.¹⁹

/s/
J.L.S.

ADV.05-CB-229670.Response.LaborersLocal980. [REDACTED]

¹⁹ The Region should also allege that the Union violated Section 8(b)(1)(A) by maintaining dues checkoff authorizations that limit an employee's right to revoke that authorization at cessation of the contract term by imposing an earlier revocation window period. See GC Memorandum 19-04, *Unions' Duty to Properly Notify Employees of Their General Motors/Beck Rights and to Accept Dues Checkoff Revocations after Contract Expiration*, at Section II.A. (Feb. 22, 2019). With regard to the alleged Section 8(b)(2) violation in the charge, because the Union granted the Charging Party's request to resign from the Union and revoke [REDACTED] dues checkoff authorization and did not take any subsequent action to cause the Employer to continue deducting dues from [REDACTED] paycheck, there is no basis for finding a Section 8(b)(2) violation. See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB at 330.