

## NLRB: Employer Letters Regarding Dues Payment Options Violated NLRA

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Since Indiana became a Right-to-Work state, one of the most common employer questions has been – what can I tell my employees about when they can withdraw their dues authorization forms? The NLRB last week, in a non-RTW context, did give us some guidance – even though it’s probably guidance that most employers wouldn’t necessarily welcome. The Board examined letters drafted by an employer and found that the letters, particularly in the context of other ULP charges, were unlawful because they actually encouraged employees to resign from the Union. Here are the facts:

The company’s collective bargaining agreement had expired and they stopped withdrawing union dues. They then agreed to reinstate deductions as of January 2 and then reneged on that agreement on February 11. Just prior to February 11, the company distributed letters to its employees advising them of their options regarding the payment of dues, including the revocation of dues authorizations and resignation from union membership. The letters varied slightly based on whether an employee had a current dues authorization form on file and whether he or she had been hired before the bargaining agreement expired. All of the letters stated that the union had demanded that dues be deducted from paychecks. The company instructed its managers, when delivering the letters, to inform the employees that the company did not want to resume dues deduction but would do so unless the employee directed otherwise. Letters to employees hired before the contract expired who had authorization forms on file stated in part: “While you might otherwise be able to revoke your authorization to [sic] dues taken from your paycheck, it may not be possible at this time because the dues deduction authorization implies that opting out is only permitted during [window periods] . . . . One option available to you if you do not wish dues to be deducted from your check is to resign union membership. To do this, you must send a letter to the Union . . . stating you want to resign your membership, effective immediately. (A sample letter is available from Human Resources or your Manager.) If you resign union membership it will not impact your wages, benefits or seniority, and you will still participate in your current medical and pension plans.” Letters to employees hired before the contract expired but who did not have authorization forms on file stated in part: “Since there is not a signed dues deduction authorization form in your file, we cannot begin deducting dues, initiation and reinstatement fees as the Union has demanded. If you wish dues to be deducted from your paycheck, you need to complete a union dues authorization form which you can get from Human Resources or your Manager. Or, you may pay your union dues and other charges directly to the union at their offices. One option available to you if you do not want to pay union dues at all is to resign union membership. To do

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this, you must send a letter to the Union . . . stating you want to resign your membership, effective immediately. (A sample letter is available from Human Resources or your Manager.) Know if you resign union membership it will not impact your wages, benefits or seniority, and you will still participate in your current medical and pension plans.” The sample resignation letter stated: “I hereby resign as a member of Unite Here Local 8. My resignation is effective immediately. Please confirm receipt of this letter promptly to my home address at: Any further collection of dues or fees from me made after your receipt of this letter will violate my rights under the National Labor Relations Act.” The company argued that the letters were lawful under established Board precedent in *Perkins Machine Co.* and *Peoples Gas System*, because the its letters simply informed employees of their rights and therefore did not constitute unlawful solicitation. The Board was not persuaded finding both cases to be distinguishable from this factual setting. The Board stated that in both cases, “the collective-bargaining agreements provided for an annual window allowing employees to revoke their dues-check-off authorizations and the employers in both of those cases issued letters to union members just prior to the window period, pointing out the contract’s check-off revocation provision and dates. In both cases, the letters reassured employees that the employer was not urging employees either to remain union members or to resign from the union and that their choice would have no effect on their wages, benefits, or treatment. And in each case, the employer’s action occurred in an atmosphere free of any coercion.” Here, the letters were not distributed in “anticipation of a contractually-established window period for revocation.” In fact, the Board found, the letters actually instructed employees how they could “sidestep those periods by resigning from the Union immediately.” Showing a “more expeditious option” to the employees laid bare the Company’s intentions, the Board concluded. The company’s “purpose was not neutral.” Significantly, the Board also found intent in the pre-prepared union resignation letter and further found that the company used the resignation letter as an unlawful form of polling. By alerting employees that they could secure a union resignation letter from HR, that provided the company with a method of keeping track of exactly how many employees wanted out of the union dues obligation. The case is *Space Needle, LLC and UNITE HERE! Local 8 and Julia Dube* and a copy of the Board’s decision is available [here](#).