

'Show Your Face' – IBEW Restrictions On Union Resignation And Dues Checkoff In Right-to-Work States Found Unlawful

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In *Local 58, International Brotherhood of Electrical Workers (IBEW) 365* NLRB No. 30 (February 10, 2017), the National Labor Relations Board (NLRB) struck down IBEW's requirements that members "appear in person," show "picture identification," or "make other arrangements" to verify their identity before being able to resign from the union and revoke prior dues checkoff authorizations. This case is particularly significant for employees in right-to-work states, who as a matter of law cannot be subject to union security provisions that force union membership or put employees in peril of termination at the request of a union. In right-to-work states, employees are free to resign union membership and stop paying dues, subject to the terms of a lawful dues authorization agreed to between the union and the employee. In the IBEW case, an employee in Michigan, one of 28 right-to-work states (the latest being Missouri, effective Feb. 6), sought to resign from the IBEW and stop paying dues; however, the IBEW had designed a policy that required union members to "appear in person" at the union hall and "show picture identification" to do so. Alternatively, the resigning union member could try to "make other arrangements" that the union left vague and unspecified. The fact is, (and this author is aware) unions frequently use such policies or requirements in right-to-work states to make resignation and stopping union dues payments more difficult. The employee challenged this union policy. Such union tactics may now be successfully challenged by employees. The board held the IBEW's policy restrictions were unlawful and rejected the union's argument that these were "modest" procedural requirements. First, the NLRB held that the "combined in person" and "identification" requirements were a clear restraint on employees' Section 7 right to resign their membership from a union. Relying on prior precedent, the board affirmed that "*any* restrictions on resignation from unions [are] invalid." Second, the board held the "appear in person" requirement at the union hall was an "inherently [and an] unconscionable impediment" to the right of employees to revoke dues checkoff and also restrained that right, and the law's "undue hardship" exception could not save the IBEW's policy. Finally, the NLRB held the IBEW also had no right to unilaterally impose restrictions on the right of employees to revoke dues checkoff, as any such restrictions on that right had to be made with mutual assent because dues checkoff authorizations are an agreement between the employee and his/her union. The board opinion also affirmed an employees' right to "avoid a face-to-face encounter with a union representative responsible for administering a policy that deems resignation harmful to members" because such an encounter equaled (for rather obvious reasons) illegal restraint curtailing an employees'

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ability to exercise his or her statutory rights. As those of us familiar with union tactics directed toward resigning members and dues payers in right-to-work states (the use of SCAB lists, SCAB billboards or other acts of public shaming or intimidation) know, such an encounter certainly could prove daunting. And now, the NLRB has recognized such requirements are in fact illegal.