

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

# Advice Memorandum

DATE: August 25, 2003

TO : Robert H. Miller, Regional Director  
Joseph P. Norelli, Regional Attorney  
Tim Peck, Assistant to the Regional Director  
Region 20

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

SUBJECT: Hotel King Kamehameha 512-5042-3385  
Case 37-CA-6390-1 524-5090-1775-7750

This memorandum supersedes the prior Advice memorandum in this case dated June 30, 2003.

By memorandum dated April 29, 2003, the Region originally submitted this case for advice primarily on whether the Employer violated Section 8(a)(3) and (1) of the Act by refusing to deduct union dues pursuant to valid checkoff authorizations signed by the unit employees after the parties' labor contract had expired. On June 30, 2003, the Division of Advice issued a memorandum instructing the Region to issue a Section 8(a)(3) and (1) complaint alleging that the Employer was discriminatorily refusing to make payroll deductions for Union dues while permitting such deductions for the Hawaii Community Federal Credit Union. The Region subsequently issued a complaint against the Employer containing this allegation.

On further consideration, the Region should withdraw the complaint and dismiss the Section 8(a)(3) and (1) charge. The rationale of the June 30 Advice memorandum was based on the Board's decision in Exxon Shipping Co.<sup>1</sup> In that case the Board held that, if unit employees voluntarily authorize their employer during a contract hiatus to continue deducting union dues from their paychecks, that employer violates Section 8(a)(3) and (1) by discriminatorily refusing to honor those checkoff authorizations while honoring written payroll deduction authorizations for numerous other non-union purposes.<sup>2</sup> The Board found that the employer there acted unlawfully because while it would not honor the employees' post-contract dues

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<sup>1</sup> 302 NLRB 290 (1991), reversed on other grounds 312 NLRB 566 (1993).

<sup>2</sup> Id., 302 NLRB at 292.

checkoff authorizations, it would permit payroll deductions for tax payments, investments, child support, and alimony.<sup>3</sup>

In contrast to the facts in Exxon Shipping, there is insufficient evidence of discrimination in the current case to justify finding a Section 8(a)(3) and (1) violation because the Employer here is only permitting two limited payroll deductions. The first deals with the Aloha United Way. Because a payroll deduction for a single charitable organization does not establish discriminatory motive,<sup>4</sup> the deduction for the Aloha United Way should not factor into the discrimination analysis. This leaves only the payroll deduction for the Hawaii Community Federal Credit Union, which is a non-profit, community based organization. Unlike Exxon Shipping where the employer's anti-union motive was evident because it permitted payroll deductions for multiple non-union purposes, we believe the presence here of this limited deduction is not sufficient to establish anti-Union discrimination.

Finally, it is also significant here that the parties are currently engaged in negotiations over a successor contract in which dues checkoff is an issue being bargained over. The parties can attempt to resolve their differences over this issue in that forum.

B.J.K.

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<sup>3</sup> Id. at 290, 292.

<sup>4</sup> See, e.g., Woodland Clinic, 331 NLRB 735, 739 (2000) (finding that employer did not discriminate against dues checkoff by permitting "one single instance of charitable payroll deduction without a service fee"). Cf. Hammary Mfg. Co., 265 NLRB 57, 57 n.4 (1982) (finding that an employer's tolerance of isolated beneficent solicitation does not by itself constitute sufficient evidence of disparate treatment of union solicitation).