

Local Lodge 2045, District 102, International Association of Machinists and Aerospace Workers, AFL-CIO (Eagle Signal Industrial Controls) and Patricia A. Penry, Barbara L. Spurrier, Barbara Hanson, Sharon L. Richards, Carole J. Goodin, and Sharon Moore. Cases 33-CB-1786-1, 33-CB-1786-2, 33-CB-1786-3, 33-CB-1786-4, 33-CB-1786-5, and 33-CB-1786-6

26 January 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

Upon unfair labor practice charges filed on 3 March 1982 by Patricia A. Penry in Case 33-CB-1786-1, on 4 March 1982 by Barbara L. Spurrier in Case 33-CB-1786-2 and by Barbara Hanson in Case 33-CB-1786-3, on 8 March 1982 by Sharon L. Richards in Case 33-CB-1786-4 and by Carole J. Goodin in Case 33-CB-1786-5, and on 23 March 1982 by Sharon Moore in Case 33-CB-1786-6, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 33, issued, on 23 April 1982, an order consolidating cases and consolidated complaint against Local Lodge 2045, District 102, International Association of Machinists and Aerospace Workers, AFL-CIO (herein called the Respondent or the Union), alleging that the Respondent engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the complaint and notice of hearing were served on the Respondent, the Charging Parties, and Eagle Signal Industrial Controls (herein called Eagle Signal or the Employer). Thereafter, the Respondent timely filed an answer denying the commission of any unfair labor practices.

On 8 November 1982 the parties jointly moved the Board to transfer the instant proceeding to the Board without the benefit of a hearing before an administrative law judge, and submitted therewith a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On 28 January 1983 the Associate Executive Secretary of the Board issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel and Respondent filed briefs. On the entire record in the case, the Board makes the following findings.

I. JURISDICTION

The complaint alleges, the parties stipulated, and we find the following:

268 NLRB No. 81

Eagle Signal is a wholly owned subsidiary of Gulf & Western Manufacturing Company, a Delaware corporation, with an office and facility located in Davenport, Iowa. Eagle Signal is engaged in the business of manufacturing industrial timers, counters, and computerized equipment. During the past 12 months, which period is representative of all material times herein, in the course and conduct of its business operations, Eagle Signal purchased and caused to be transferred and delivered to its Davenport, Iowa facility goods and materials valued in excess of \$50,000 which were transported directly to its Davenport, Iowa facility from States other than the State of Iowa. Eagle Signal is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION INVOLVED

The complaint alleges, the parties stipulated, and we find that Local Lodge 2045, District 102, International Association of Machinists and Aerospace Workers, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Issues*

1. Whether the Respondent violated Section 8(b)(1)(A) of the Act by refusing to acknowledge the effectiveness of the Charging Parties' resignations from the Respondent when its constitution contains no restraints on resignations from membership.

2. Whether on the facts of this case the payment of membership dues is a quid pro quo for membership in the Respondent, and, if so, whether the Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing the Employer to continue to withhold the Charging Parties' membership dues pursuant to their respective checkoff authorizations after the Charging Parties had effectively resigned their union membership.

B. *The Stipulated Facts*

Eagle Signal and the Respondent are parties to a collective-bargaining agreement extending from 15 August 1980 through 14 August 1983. This agreement, in accordance with Iowa statutes, expressly provides that employees are not required to become members of the Respondent or to pay dues to it as a condition of employment. This agreement also expressly provides that those who choose to become and are members of the Respondent may authorize the Employer to make monetary deduc-

tions from their paychecks on a monthly basis in amounts equal to the periodic union dues established by the Respondent by executing the following authorization form provided by the Employer:

WAGE ASSIGNMENT

Name of Employee _____
 (Please Print)
 Clock No. — Social Security No. _____
 Date _____

I hereby authorize and direct Eagle Signal Division to deduct from my pay beginning with the current month initiation or reinstatement fees and my regular monthly Union dues as certified to the Company by the Financial Secretary of the Union in accordance with regular membership dues in the International Association of Machinists and Aerospace Workers.

I submit this authorization and assignment with the understanding that it is effective this date and irrevocable, except for the last five (5) calendar days of each contract year or the termination date (if any) of the collective bargaining agreement between Eagle Signal and District No. 102, International Association of Machinists and Aerospace Workers. This authorization and assignment shall continue in full force and effect for yearly periods beyond the irrevocable period set forth above, and each subsequent yearly period shall be similarly irrevocable unless revoked by me within the last five (5) calendar days of each contract year.

Such revocation shall be effected by written notice and sent by Registered Mail, Return Receipt Requested, to the Employer and the Union within such five (5) calendar-day period.

The Respondent's constitution contains no restriction on resignations from membership.

The Charging Parties have at all times material been employed by Eagle Signal at its Davenport, Iowa plant and have been members of the bargaining unit of all production and maintenance employees which is represented by the Respondent. Each of the six Charging Parties, on becoming a member of the Respondent, executed a copy of the above-described wage assignment.

On or about 17 November 1981¹ the Respondent and Eagle Signal, pursuant to collective-bargaining negotiations, modified the collective-bargaining agreement. These modifications provided, *inter alia*, for extension of the contract's expiration date

¹ All dates herein are in 1981 unless otherwise indicated.

from 14 August 1983 until 14 September 1984. Midterm contract modifications were subsequently ratified by a majority of the Respondent's members employed by Eagle Signal on or about 20 November.

On or about 20 November the Respondent, by members of its executive committee, told the six Charging Parties, in response to their inquiry, that they would not be permitted to resign their respective memberships in the Respondent at that time. Thereafter, on or about 21 November, employee Hanson, by certified letters to the Respondent and the Employer, attempted to resign her membership in the Respondent and revoke her authorization for Eagle Signal to deduct union dues from her future paychecks.² On or about 22 November employee Penry, while at the plant, signed a petition addressed to the Respondent which indicated her desire to resign her union membership. On or about 23 November employees Spurrier, Richards, Goodin, and Moore each hand delivered separate resignation and revocation of dues-checkoff authorization letters at the plant to union steward Ruth Clayborn³ and to the Employer.

On or about 23 November agents of the Respondent met with Eagle Signal's management officials to advise them that the requests of the Charging Parties to revoke their respective checkoff authorizations were opposed by the Respondent as untimely under the contract's above-described wage assignment provision. Subsequently, on 25 November, the Employer hand delivered memoranda to the Charging Parties to inform each of them that their requests to cancel their checkoff authorizations were untimely and would only be timely, as a result of the extension of the expiration date of the collective-bargaining agreement, if received on 10, 11, 12, 13, or 14 September 1982, 1983, or 1984. Thereafter, during the period from November 1981 through August 1982, the Employer continued, on a monthly basis, to deduct from the wages of each of the Charging Parties, and to remit to the Respondent, dues in the amount established by the Respondent. During this same period, the Respondent refused to accept the requests for resignation from membership submitted by each of the Charging Parties.

C. Contentions of the Parties

The General Counsel contends that, because the Respondent's constitution contains no restrictions on resignation from membership, members can

² These letters were received by the Respondent and Eagle Signal on 23 and 24 November, respectively.

³ The parties stipulated that Clayborn is an agent of the Respondent within the meaning of Sec. 2(13) of the Act.

resign at will and that the Respondent's refusal to give effect to the Charging Parties' resignations therefore violated Section 8(b)(1)(A) of the Act. The General Counsel further contends that the payment of dues, as stated in the wage assignment signed by the Charging Parties, is a quid pro quo for membership in the Respondent; that accordingly, by operation of law, when the Charging Parties resigned their membership in the Respondent, their checkoff authorizations were revoked; and that, by causing the Employer to withhold monthly dues from the Charging Parties' wages after said resignations, the Respondent violated Section 8(b)(1)(A) and (2) of the Act.

Other than a bald assertion that it did not act unlawfully, the Respondent makes no effort to defend its refusal to give effect to the Charging Parties' resignations from union membership. However, the Respondent contends that it did not violate the Act by refusing to recognize the Charging Parties' resignations from union membership as valid revocations of their checkoff authorizations. Specifically, the Respondent argues that the above-described wage assignment authorizes an assignment of wages which is separate and apart from, and not in consideration for, union membership; that the wage assignment which each of the Charging Parties voluntarily signed is a contract entitled to full force and effect unless revoked in accordance with the provisions set forth therein; and that, since none of the Charging Parties complied with the revocation provisions of the wage assignment, they have not effectively revoked their checkoff authorizations. The Respondent further contends that to hold otherwise would jeopardize the Union's ability to perform its statutory obligation to fairly represent all employees in the bargaining unit.

D. Discussions of Law and Conclusions

The law is well settled that, where a union's constitution or bylaws contain no restraints on a member's right to resign from union membership,⁴ a member may resign at will.⁵ It is also well settled that, where there is no established method for resignation, a member may communicate to the union his intent to resign in any reasonable way so long as the intent to resign is clearly conveyed.⁶ The facts in this case establish that neither the Respondent's constitution nor bylaws contain any restraints on a member's right to resign. Further, each of the

Charging Parties communicated to the Respondent, in writing, that she no longer wished to be a member of the Union. We therefore find that each of the Charging Parties clearly conveyed to the Respondent, by reasonable means, her intent to resign from union membership. Accordingly, we find that the Respondent's refusal to give effect to the Charging Parties' resignations constitutes restraint and coercion of the Charging Parties' exercise of their Section 7 rights in violation of Section 8(b)(1)(A) of the Act.

The question remaining is whether the Charging Parties also effectively revoked their checkoff authorizations. Between 21 and 23 November each of the Charging Parties had effectively resigned her membership in the Respondent. All but employee Penry had at the same time also indicated to the Respondent and the Employer their wish to revoke the authorizations which each had executed on becoming a member of the Respondent. Nevertheless, the Respondent refused to give effect to these revocation requests, and encouraged the Employer to do likewise, on the grounds that they were not timely under the provision of the wage assignment which restricts revocation to a period of the last 5 calendar days prior to the contract anniversary date of 15 September. The Employer agreed with the Respondent and continued to deduct dues from the pay of the Charging Parties.⁷

It is established Board law that a dues-checkoff authorization, or wage assignment as it is called in this case, is a contract between an employee and his employer⁸ and that a resignation of union membership ordinarily does not revoke a checkoff authorization.⁹ However, a resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership.¹⁰ This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself.

In this case, the parties' collective-bargaining agreement, consistent with the right-to-work laws of Iowa where the Employer is located, has no provisions requiring membership in the Respondent or the payment of dues to it as a condition of employment.

⁴ For the reasons set forth in Member Hunter's concurring opinion in *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982), Chairman Dotson and Member Hunter would find the resignations here to be valid irrespective of any restrictions contained in the Union's constitution or bylaws.

⁵ *NLRB v. Textile Workers Local 1029*, 409 U.S. 213 (1972).

⁶ *Operative Potters Local 340 (Macomb Pottery)*, 175 NLRB 756, 760 fn. 14 (1969).

⁷ Although Penry did not expressly request revocation of her checkoff authorization, it is clear that had she done so her request would not have been honored. In any event, the Respondent does not contend that Penry should be treated differently from the other Charging Parties.

⁸ *Cameron Iron Works*, 235 NLRB 287 (1978).

⁹ *American Nurses' Association*, 250 NLRB 1324 fn. 1 and 1331 (1980); *Carpenters San Diego County District Council (Campbell Industries)*, 243 NLRB 147, 148-149 (1979).

¹⁰ *Steelworkers Local 7450 (Asarco Inc.)*, 246 NLRB 878, 881-882 (1979); and *Campbell Industries*, supra.

The wage assignment signed by the Charging Parties specifically authorizes and directs the Employer:

. . . to deduct from my pay beginning with the current month initiation or reinstatement fees and my *regular monthly Union dues* as certified to the Company by the Financial Secretary of the Union *in accordance with regular membership dues* in the International Association of Machinists and Aerospace Workers. [Emphasis added.]

The General Counsel contends that this language made payment of dues the quid pro quo for union membership. The Respondent, on the other hand, contends that the language of the wage assignment is not subject to any such interpretation and argues that the authorization extends to the payment of dues or its equivalent. We find nothing in the wage assignment, either express or implied, to indicate that it authorizes deduction of a service fee in lieu of membership dues. Rather, we find the wage assignment signed by the Charging Parties similar to the one in *Asarco*, supra, which was found by the Board to be an authorization limited to the payment of dues in consideration for union membership.¹¹ Thus, the wage assignment here directs a deduction of dues "in accordance with regular membership dues" in the Respondent. The dues-checkoff authorization in *Asarco* directed a deduction of dues "as my membership dues" in the union. We find the difference in language between these authorizations to be of little consequence—both clearly convey that the payment of dues is a quid pro quo for membership rights. The absence in this case of any provision in either the collective-bargaining agreement or the wage assignment itself for financial-core membership erases any doubt that the authorization was for anything other than the payment of dues in consideration for union membership.

Accordingly, we find the Charging Parties' wage assignments were revoked, by operation of law, when they effectively resigned their membership in the Respondent,¹² and that the Respondent, by

¹¹ The dues-checkoff authorization language in *Asarco* provided, in pertinent part:

Pursuant to this authorization and assignment, please deduct from my pay each month while I am in employment within the collective-bargaining unit in the Company, *monthly dues*, assessments and (if owing by me) an initiation fee each as designated by the International Secretary-Treasurer of the Union, *as my membership dues* in said Union. [Id. at 882, emphasis added.]

¹² This is so regardless of whether the Charging Parties also requested revocation of their checkoff authorizations. Thus, the failure of employee Penry to submit such a request is of no consequence.

causing the Employer to continue to check off their membership dues, restrained and coerced them in the exercise of their Section 7 rights in violation of Section 8(b)(1)(A) and (2) of the Act.¹³

CONCLUSIONS OF LAW

1. Eagle Signal Industrial Controls is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent Local Lodge 2045, District 102, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to give effect to the valid resignations from membership of employees, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. By attempting to cause, and by causing, the Employer to withhold the dues of employees who had effectively resigned from the Respondent where the employees' dues-checkoff authorization was in consideration for union membership, the Respondent violated Section 8(b)(1)(A) and (2) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom, and to take certain affirmative action to effectuate the policies of the Act.

We shall order the Respondent to make employees Penry, Spurrier, Hanson, Richards, Goodin, and Moore whole for any monetary loss they may have suffered by reason of the Respondent's unlawful conduct in causing the Employer to withhold their dues after they had effectively resigned from the Respondent's membership, with interest in accordance with the formula prescribed in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

ORDER

The National Labor Relations Board orders that the Respondent, Local Lodge 2045, District 102, International Association of Machinists and Aerospace Workers, AFL-CIO, East Moline, Illinois, its officers, agents, and representatives, shall

¹³ We find no merit to the Respondent's assertion that, by permitting revocation of the wage assignment by means, and at times, other than those prescribed in the assignment, its ability to perform its statutory obligation to fairly represent employees in the bargaining unit will be jeopardized due to potential loss of financial support.

1. Cease and desist from

(a) Refusing to give effect to the valid resignations from membership of the employees of Eagle Signal Industrial Controls or any other employer.

(b) Causing dues to be withheld from employees who have effectively resigned their union membership.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Reimburse or refund to Patricia A. Penry, Barbara L. Spurrier, Barbara Hanson, Sharon L. Richards, Carole J. Goodin, and Sharon Moore the dues unlawfully collected from them for the period following their valid resignations, as set forth in the section herein entitled "The Remedy."

(b) Post at its offices and meeting halls in East Moline, Illinois, copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Deliver to the Regional Director signed copies of the notice in sufficient number to be

posted by Eagle Signal Industrial Controls if it is willing.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act, and we have been ordered to post this notice.

WE WILL NOT refuse to give effect to the valid resignations from membership of the employees of Eagle Signal Industrial Controls or any other employer.

WE WILL NOT cause dues to be withheld from employees who have effectively resigned their union membership.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse or refund to Patricia A. Penry, Barbara L. Spurrier, Barbara Hanson, Sharon L. Richards, Carole J. Goodin, and Sharon Moore the dues unlawfully collected from them for the period following their valid resignations, plus interest.

LOCAL LODGE 2045, DISTRICT 102,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO

¹⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."