

**United States Postal Service and Darlene Proctor
American Postal Workers Union, Fort Worth Area
Local and Darlene Proctor
American Postal Workers Union and Darlene Proctor.** Cases 16-CA-14268(P), 16-CB-3455(P), and 16-CB-3487(P)

April 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On December 29, 1989, the General Counsel of the National Labor Relations Board issued an order consolidating cases, second consolidated complaint and notice of hearing in the above-entitled proceeding. The consolidated complaint alleges that the Respondent Employer has violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act by refusing to honor Charging Party employee Darlene Proctor's request that it cease deducting union dues from her paycheck following her resignation from Respondent Unions. It further alleges that the Respondent Unions violated Section 8(b)(1)(A) and (2) by refusing to process the Charging Party's resignation from membership and dues-deduction revocation and by causing the Respondent Employer to continue to give effect to the Charging Party's checkoff authorization. On January 11, 1990, the Respondents filed a joint answer, admitting in part and denying in part the allegations of the complaint.

Paragraph 7 of the complaint alleges that the Respondent Employer and the Respondent National Union have been and were then parties to successive collective-bargaining agreements. Paragraph 8 alleges that the most recent agreement contained a checkoff provision, whereby employees of the Respondent Employer could cause the Employer to deduct initiation fees and regular monthly dues from their wages and remit them to the Respondent Unions. Paragraph 9 alleges that on July 28, 1985, the Charging Party submitted to the Respondent Employer a signed checkoff authorization, dated May 14, 1985, directing the Respondent Employer to deduct regular monthly dues from her wages and remit them to the Respondent Unions. Paragraph 10 alleges that on or about August 18, 1989, the Charging Party submitted to the Respondent Employer a completed form 1188 ("Cancellation of Organization Dues From Payroll Withholding"), along with a letter stating that she was resigning from the Unions and requesting that the Respondent Employer immediately cease deducting union dues from her wages. Paragraph 11 alleges that on August 23, 1989, the Respondent Employer notified the Charging Party in writing that it was not honoring her request to cease deducting dues from her paycheck.

Paragraph 12 alleges that on August 25, 1989, the Charging Party notified the Respondent Unions that she was resigning membership. Paragraph 13 alleges that the Respondent Unions thereafter refused, and have continued to refuse, to process the Charging Party's resignation and dues deduction revocation because they consider said requests untimely filed and not in conformity with established procedures for dues-checkoff revocations.

The Respondent Employer and the Respondent Unions admit the allegations in paragraph 7. The Respondents aver that pursuant to section 1205 of the Postal Reorganization Act (PRA)¹ and article 17.7 of the "National [collective-bargaining] Agreement," Postal Service employees may voluntarily authorize the Service to withhold moneys from their wages and remit them to designated organizations.

The Respondent Employer admits that a form 1187 ("Authorization for Deduction of Dues") signed by the Charging Party was placed in the payroll system on July 31, 1985. The Respondent Employer further admits that on or about August 18, 1989, the Charging Party submitted to the Respondent Employer a completed form 1188 ("Cancellation of Organization Dues from Payroll Withholdings") along with a letter stating her intent to resign union membership and requesting immediate cessation of dues deductions from her paycheck. The Respondent Employer admits only that on or about August 23, 1989, it responded in writing to the Charging Party. The Respondent Employer denies that it has violated the Act.

The Respondent Unions aver that they have insufficient knowledge either to admit or deny allegations concerning the Charging Party's resignation from union membership; however, they deny that they are or ever have been unwilling to process her resignation. The Respondent Unions admit that they are unwilling to process the Charging Party's checkoff revocation because it was not filed in accordance with the terms of the checkoff agreement. The Respondent Unions further admit that they have enforced the terms of the Charging Party's checkoff authorization. The Respondent Unions deny that they have violated the Act.

On January 9, 1990, the Respondents filed with the Board a joint motion to dismiss or hold in abeyance, with brief and supporting documents attached. On January 22, 1990, the General Counsel filed an opposition to the Respondents' motion and a Cross-Motion for Summary Judgment, supported by brief and exhibits. On January 24, 1990, the Board issued an order transferring proceeding to the Board and Notice to Show Cause why the Respondents' motion to dismiss and/or the General Counsel's Motion for Summary Judgment should or should not be granted.

¹ 39 U.S.C. § 1205.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motions

I. JURISDICTION

The Respondent Employer provides postal services for the United States of America and operates various facilities throughout the United States, including the General Mail Facility in Fort Worth, Texas. The Board has jurisdiction over the Respondent by virtue of the provisions of Chapter 12, Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 (PRA). The American Postal Workers Union, AFL-CIO and its Fort Worth Area Local are labor organizations within the meaning of Section 2(5) of the Act.

II. ADMITTED OR UNDISPUTED FACTS

The undisputed complaint allegations establish that on or about July 28, 1985, the Charging Party submitted to the Respondent Employer a signed checkoff authorization (form 1187) directing the Employer to deduct from her wages and remit to the Respondent Unions her regular monthly dues. The authorization, a copy of which was submitted by the General Counsel as "Exhibit 5" in support of his motion, specifically provides, in part, as follows:

This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one year.

The Charging Party thereafter submitted to the Respondent Employer a signed form 1188, headed "Cancellation of Organization Dues From Payroll Withholding," dated August 18, 1989. On the form is a printed statement, which was also dated "8-18-89," certifying that the Charging Party sent a copy of the form to the Respondent Union. Printed immediately after this certification is the statement, "Notice must be received within the required window period."

The Respondent Employer replied in writing to this request (G.C. Exh. 7), stating that the revocation could not be processed, citing the terms of the checkoff authorization which limit the cancellation period to "not more than 20 days and not less than 10 days prior to the anniversary date (date of delivery to employer)." (Emphasis in original.) The Respondent Employer's letter further advised the Charging Party to "complete

the attached form 1188 and return it to us within the 10-20 day window period of your anniversary date of July 31."

As noted above, the Respondent Unions did not process the Charging Party's dues-checkoff revocation because it was not filed in conformance with the terms of the checkoff agreement. Accordingly, the Respondent Unions have continued to enforce the terms of the checkoff.

III. POSITIONS OF THE PARTIES

In their joint motion, the Respondents contend that the General Counsel is attempting to invalidate the parties' negotiated checkoff agreement to the extent that it makes assignment of dues irrevocable for a period of 1 year. They cite two cases dealing with the same issue in which courts of appeals have denied enforcement to Board orders finding that the Postal Service or postal employee unions acted unlawfully in similar circumstances: *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987), in which the court found the Board's decision at odds with a reasonable construction of PRA section 1205; and *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987), which the court remanded to the Board so that it could "put forward a reasoned basis for its rule, adopt the approach in footnote 5 of its decision, or adopt some third approach." In light of this criticism of the Board's approach in these cases, and inasmuch as the Board accepted remand from the Ninth Circuit, the Respondents ask the Board either to adopt the Sixth Circuit's interpretation of the PRA or to defer proceeding with the instant case until the Board responds to the issues on remand and the court of appeals has an opportunity to review that decision.

The Respondents assert that except for the inclusion of unfair labor practice allegations against the Unions in the instant case, the factual basis of this complaint is identical to that in the remanded case. The Respondents thus refer the Board to their position statement filed in that proceeding and reiterate their request that the Board reexamine its construction of the applicable statute, the PRA. Specifically, they question how an employee can be permitted to revoke a checkoff authorization at will when the language of section 1205(a) of the PRA directs that "written assignments . . . shall be irrevocable for a period of not more than one year."

The General Counsel argues that this case involves certain unique facts and allegations that distinguish it from the cases cited by the Respondent in support of its argument that we should defer our ruling here. Accordingly, the General Counsel argues that, contrary to the Respondents' contention, it is not appropriate to withhold a ruling in this case until after we have issued a decision on the case remanded by the Ninth

Circuit and the decision on remand has been reviewed by that court.

On the merits, the General Counsel makes four separate arguments for finding that the Respondents violated the Act as alleged when they failed to give effect to the Charging Party's attempt to revoke the authorization. Three of them are arguments that would apply to all employers subject to the Act. They are thus based on the premise that the law governing checkoffs is the same for employees of the Postal Service as for employees of other employers.² In its fourth argument, the General Counsel argues that PRA section 1205(a) itself prohibits checkoff of union dues from a non-member because the statute provides only for checkoff of dues from the pay "of all *members* of a [labor] organization" (emphasis added).

IV. ANALYSIS

In *Postal Service*, 302 NLRB 322 (1991), on remand from the Ninth Circuit Court of Appeals, the Board reconsidered the issue of the effect of an employee's resignation from union membership on his dues-checkoff authorization under the PRA. Giving the "plain meaning" to the irrevocability provision of section 1205(a), in light of the pre-PRA system of labor relations among postal employees and the legislative history of the PRA, the Board concluded that the PRA *requires* a period of checkoff irrevocability while section 302(c)(4) of the LMRA permits, but does not mandate a period of irrevocability. The Board determined that section 1205 requires the Postal Service to honor a checkoff authorization's irrevocability period if it is for not more than a year, notwithstanding an authorization signer's resignation from union membership during that period. Accordingly, it is not a violation of an employee's Section 7 rights for the Postal Service or labor organizations representing postal employees to continue to give postresignation effect to a dues-checkoff authorization if the checkoff revocation is not made

² In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 332 (1991), the Board modified existing precedent governing the obligation of employers other than the Postal Service to honor checkoff revocations. As explained below, however, the line of cases discussed there (including cases on which the General Counsel has relied in this case) are no longer relevant to determining the legality of refusals to honor checkoff authorizations covered by the PRA.

within the prescribed time periods for revocation and if the irrevocability period is not more than a year.³

Accordingly, we find that the Respondents did not violate the Act by refusing to give effect to the Charging Party's untimely attempted revocation of checkoff authorization. On this basis the Respondents' motion to dismiss allegations of violation of Section 8(a)(3), (2), and (1) against the Respondent Employer is granted and the General Counsel's Cross-Motion for Summary Judgment is denied. Similarly, the Respondents' motion to dismiss allegations against the Respondent Unions of violations of Section 8(b)(1)(A) and (2) based on their continued enforcement of the checkoff terms is also granted and the General Counsel's Cross-Motion for Summary Judgment is denied.

The complaint additionally alleges that the Respondent Unions failed and refused to honor the Charging Party's request to resign membership. While the Respondent Unions deny that they have ever been unwilling to process the Charging Party's resignation, they claim to have insufficient information concerning the facts surrounding this allegation to provide further clarification of the matter. In view of the outstanding factual dispute on this issue, we deny both the Respondent Unions' motion to dismiss the 8(b)(1)(A) allegation dealing with the Charging Party's resignation, as well as the General Counsel's Cross-Motion for Summary Judgment.⁴ We shall, therefore, remand this allegation to the Region for further appropriate proceedings.

ORDER

The complaint allegations against the Respondent Employer are dismissed. The complaint allegations of Section 8(b)(1)(A) and (2) against the Respondent Unions are dismissed insofar as they relate to the enforcement of the Charging Party's checkoff authorization. Complaint allegations of 8(b)(1)(A) violations against the Respondent Unions for purported interference with the Charging Party's right to resign membership are remanded to the Region for further proceedings.

³ In rejecting the General Counsel's contention that the use of the word "members" in PRA section 1205(a) should properly restrict the deduction of dues by checkoff only to those employees who hold current membership status within the labor organization, we rely on *Postal Service*, supra at 334 fn. 12, in which the Board explained its reasons for finding no merit to this argument.

⁴ The Respondents' motion to hold proceeding in abeyance is denied.