

**United Food & Commercial Workers, Local 425,  
AFL-CIO and Hudson Foods, Inc.** Case 26-  
CB-2259

March 29, 1991

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On February 23, 1987, the Board issued a Decision and Order in this proceeding<sup>1</sup> in which, based on a stipulated record, it concluded that the Respondent, by attempting to cause the Employer to withhold dues from the paychecks of employees who had effectively resigned union membership, violated Section 8(b)(1)(A) and (2) of the Act. Thereafter, the Board filed an application for enforcement of its Order with the United States Court of Appeals for the Eighth Circuit. On October 8, 1987, the Board moved the court to remand the matter to the Board for further consideration. The Respondent did not oppose the motion. On October 27, 1987, the court granted the motion and remanded the case to the Board for further consideration.

On March 1, 1988, the Board notified the parties that it was reconsidering, *sua sponte*, its decision in the proceeding and invited the parties to file statements of position with respect to the issues raised by the reconsideration. Thereafter, all parties filed statements of position.

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

We have reconsidered this case in light of the briefs and the entire record and have decided to affirm the Board's previous finding that the Respondent violated Section 8(b)(1)(A) and (2), for the following reasons.

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,<sup>2</sup> the Board acknowledged judicial criticism of the analysis of *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635 (1984),<sup>3</sup> relied on in the Board's earlier decision in this case, and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation from union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must

be clear and unmistakable.<sup>4</sup> In order to give full effect to these fundamental labor policies, the Board stated that it would:

construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee had bound himself or herself to pay the dues even after resignation of membership. [Id. at 328–329.]<sup>5</sup>

Applying the analysis of *Lockheed* to the stipulated facts in this case, we find that the Respondent has failed to show that the dues-checkoff authorizations<sup>6</sup> the nine employees here signed obligated them to pay dues after they effectively resigned union membership. As in *Lockheed*, all that employees Mathis, Scroggins, Johnson, Dora Mae Gillispie, Charles Gillispie, English, Clark, Brown, and Almond clearly agreed to do, was to allow certain sums to be deducted from their wages and remitted to the Respondent for payment of their "Union initiation fees and membership dues" or "membership dues." They did not clearly agree to have deductions made even after they had submitted their resignation from union membership.

We find that these partial wage assignments made by Rhonda Mathis, Jessie L. Scroggins, Lois M. Johnson, Dora Mae Gillispie, Charles Gillispie, Arthur Jean English, Abraham Clark, Shara A. Brown, and Bill Almond were conditioned on their union membership and were revoked when they ceased being union members.<sup>7</sup> The Respondent, however, through the contractual grievance-arbitration procedure, attempted to cause the Employer to continue to check off membership dues of employees after their resignations had been accepted by the Respondent. We conclude that the Re-

<sup>4</sup> *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

<sup>5</sup> In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. Although the parties' stipulation is silent as to whether the collective-bargaining agreement contained a union-security clause, we note that the Employer's facility is located in Arkansas, a right-to-work state. Accordingly, the *Lockheed* test is applicable to this case.

<sup>6</sup> See 282 NLRB at 1414.

<sup>7</sup> On various dates between October 8, 1985, and about April 1, 1986, the Respondent received letters from these employees requesting resignation from the Respondent, and discontinuance of the union-dues deductions. Thereafter, the Respondent accepted these resignations, and the Employer ceased deducting union dues from the employees' wages.

<sup>1</sup> 282 NLRB 1413.

<sup>2</sup> 302 NLRB 322 (1991).

<sup>3</sup> See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

spendent's attempt to cause the Employer, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligations on the employees, to continue to honor dues-checkoff authorizations from employees who have resigned from union membership, violated Section 8(b)(1)(A) and (2) of the Act.

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

“3. By attempting to cause the Employer, by virtue of a dues-checkoff authorization that does not clearly and explicitly impose any postresignation dues obligation on the employee, to deduct union membership dues from the wages of any employee who has resigned union membership, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act.”

#### ORDER

The National Labor Relations Board affirms its original Decision and Order, reported at 282 NLRB 1413, and orders that the Respondent, United Food & Commercial Workers, Local 425, AFL-CIO, Hope, Arkansas, its officers, agents, and representatives, shall take the action set forth as modified below:

1. Substitute the following for paragraph 1(a).

“(a) Attempting to cause the Employer, by virtue of a dues-checkoff authorization that does not clearly and explicitly impose any postresignation dues obligation on the employee, to deduct union membership dues from the wages of any employee who has resigned union membership.”

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraph.

“(b) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.”

3. Substitute the attached notice for that of the prior decision.

#### APPENDIX

NOTICE TO 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 has ordered us to post and abide by this notice.

WE WILL NOT attempt to cause Hudson Foods, Inc., by virtue of a dues-checkoff authorization that does not clearly and explicitly impose any postresignation dues obligation on the employee, to deduct union membership dues from the wages of any employee who has resigned from 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.

UNITED FOOD & COMMERCIAL WORK-  
ERS, LOCAL 425, AFL-CIO