

United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC and its Local #915 (Dunlop Tire & Rubber Corporation) and Richard M. Holcombe. Case 16-CB-5198

April 4, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

Upon a charge filed by Richard M. Holcombe on June 13, 1988, the General Counsel of the National Labor Relations Board issued a complaint on July 28, 1988, against the Respondent, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC and its Local #915 (the Respondent or Local 915), alleging that it violated Section 8(b)(1)(A) of the National Labor Relations Act. Copies of the complaint and notice of hearing were served on the Respondent and the Charging Party. Thereafter, the Respondent timely filed an answer denying the commission of any unfair labor practices.

On December 19, 1988, the parties jointly moved the Board to transfer this proceeding to the Board, without benefit of a hearing before an administrative law judge, and submitted a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On January 24, 1989, the deputy executive secretary granted the motion, approved the stipulation, and transferred the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

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

On the entire record in this case, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Dunlop Tire & Rubber Corporation (the Employer or Dunlop), a Delaware corporation with an office and place of business in Huntsville, Alabama, is engaged in the manufacture of automobile tires. During the 12 months preceding the issuance of the complaint, a representative period, Dunlop, in the course and conduct of its business operations, sold and shipped from its Huntsville, Alabama facility goods valued in excess of \$50,000 directly to customers located outside the State of Alabama. The parties stipulated, and we find, that Dunlop is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

The issue presented is whether the Respondent violated Section 8(b)(1)(A) of the Act by refusing to honor the Charging Party's revocation of his checkoff authorization after his effective resignation from membership in Local 915.

A. *Facts*

The Employer and Local 915 are parties to a collective-bargaining agreement effective May 16, 1988.¹ The agreement provides that employees who become members of Local 915² may authorize the Employer to make monthly monetary deductions from their paychecks in amounts equal to periodic union dues, and remit those amounts to Local 915, by executing the following authorization form:

Date _____

Union Dues, Assignment, Authorization

I hereby assign to Local 915, United Rubber, Cork[,] Linoleum and Plastic Workers of America dues deductions from any wages earned and from Supplemental Worker's [sic] compensation benefits paid to me as an employee of the Dunlop Tire and Rubber Corporation, and authorize the Trustee and its agents of the SUB fund to deduct from any Supplemental Unemployment Benefits payable to me from the SUB Fund, such amount as is now established by the Union as membership dues in said Union. I hereby authorize the Dunlop Tire and Rubber corporation to make these Deduction [s] once in each month and direct that the same be remitted to the bonded officer (Treasury) of Local 915, United Rubber, Cork, Linoleum and Plastic Workers of America.

This assignment, authorization and directive shall be irrevocable for a period of one (1) year from the date of execution or until the expiration date of any applicable Company-Union Agreement, whichever occurs sooner and I agree and direct that this assignment, authorization and directive shall be automatically renewed and shall be irrevocable for successive periods of one (1) year each or for a period of each succeeding applicable Company-Union Agreement, Whichever [sic] shall be sooner, unless written revocation notice is given by me to the Company and the Union during a period of ten (10) days prior to the expiration of such period of one (1) year or of each applicable Company-Union Agreement whichever occurs sooner.

¹ The termination date of the agreement is not set forth in the record.

² Under Alabama statutes, as contemplated by Sec. 14(b) of the Act, employees may not be required to join a union or pay dues as a condition of employment. The agreement nevertheless contains a union-security provision in contravention of Alabama state law.

Charging Party Richard M. Holcombe has at all times material been employed by Dunlop at its Huntsville, Alabama facility. On October 7, 1981, Holcombe joined Local 915 and on that date signed a dues-deduction authorization form as set forth above. Since October 17, 1981, Dunlop has, on a monthly basis, deducted and withheld from Holcombe's wages the amount established by the Respondent as membership dues, and remitted those amounts to the Respondent.

About May 18, 1988, Holcombe notified Local 915 of his resignation of membership and, we infer, his desire to revoke his checkoff authorization. Local 915 honored Holcombe's resignation but informed him that it would not honor his withdrawal of dues-checkoff authorization, because it was not made during the revocation period specified in the authorization.³ At all times since May 18, 1988, Dunlop has continued on a monthly basis to deduct from Holcombe's wages, and remit to the Respondent, the amount presently established by the Respondent as membership dues.

B. Contentions of the Parties

The General Counsel contends that, under the rule set forth in *Machinists Local 2045 (Eagle Signal)*,⁴ Holcombe's resignation from Local 915 operated to revoke his dues-checkoff authorization. The Board held in *Eagle Signal* that resignation of union membership will revoke a checkoff authorization, even if the resignation does not occur during the allowable revocation period, where the authorization itself makes payment of dues a quid pro quo for union membership. The General Counsel contends that the language of the checkoff authorization signed by Holcombe provides that payment of dues is a quid pro quo for union membership. Accordingly, the General Counsel argues that under *Eagle Signal* the respondent unlawfully refused to honor Holcombe's revocation of his checkoff authorization following his effective resignation of union membership.

The Respondent argues that its conduct was lawful because the authorization in this case does not make the payment of dues a quid pro quo for union membership. The Respondent additionally cites judicial criticism of the Board's *Eagle Signal* analysis, and contends that the authorization is a contract between the Employer and the Charging Party that may only be revoked within the contractually permissible period.

³Although the record does not contain a copy of Holcombe's request that his checkoff authorization be revoked, the record does contain the Respondent's reply notifying him that his withdrawal attempt was untimely and was therefore being denied. In addition, the Respondent does not contend that Holcombe never requested that his checkoff authorization be revoked. On the contrary, the Respondent's answer to the complaint acknowledges that Holcombe "attempt[ed] to revoke his dues checkoff."

⁴268 NLRB 635 (1984).

C. Discussion

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,⁵ the Board acknowledged judicial criticism of the *Eagle Signal* analysis⁶ 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 of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board took into account 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.⁷ 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 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 has bound himself or herself to pay the dues even after resignation of membership. [302 NLRB at 328–329.]⁸

Applying the analysis of *Lockheed* to the facts in this case, we find that Local 915 has failed to show that the dues-checkoff authorization signed by Holcombe obligated him to pay dues after his effective resignation of union membership. As in *Lockheed*, all that Holcombe clearly authorized was the deduction of the amount "established by the Union as membership dues." He did not clearly authorize the continuation of this deduction after he had resigned his union "membership." We thus find that the partial wage assignment made by Holcombe was conditioned on his union

⁵302 NLRB 322 (1991).

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

⁷*Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

⁸In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security clause. As previously noted, the collective-bargaining agreement in this case contains a union-security provision that, pursuant to Sec. 14(b) of the Act, is unlawful under Alabama statutes. In the absence of a lawful union-security clause, the *Lockheed* test is applicable to this case.

membership and was revoked when he ceased being a union member. Accordingly, we find that, following the Charging Party's resignation, the Respondent violated Section 8(b)(1)(A) by continuing to accept checked-off dues and by refusing to honor the Charging Party's revocation of his dues-checkoff authorization.⁹

CONCLUSION OF LAW

By accepting checked-off dues and by refusing to honor the Charging Party's revocation of his dues-checkoff authorization after his resignation from membership in the Respondent, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in the above-described unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make the Charging Party whole for all moneys deducted from his wages following the date of his resignation and checkoff revocation, May 18, 1988, with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC and its Local #915, Madison, Alabama, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Either accepting checked-off dues or refusing to honor an employee's revocation of his dues-checkoff authorization after the employee has resigned membership in the Union, where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employee.

(b) 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 necessary to effectuate the policies of the Act.

(a) Make whole, with interest, employee Richard M. Holcombe for all moneys deducted from his wages as

⁹The complaint also alleges that the Respondent violated Sec. 8(b)(1)(A) by "caus[ing] and requir[ing] Dunlop to continue to deduct on its behalf membership dues from the wages of the Charging Party." However, the stipulated record contains no evidence that the Respondent took any affirmative steps to cause or require Dunlop to continue to deduct the Charging Party's dues after his resignation. Accordingly, a finding of such an additional 8(b)(1)(A) violation is not warranted, and we shall dismiss this complaint allegation.

union dues after the date of his resignation from union membership and revocation of his checkoff authorization.

(b) Post at its business offices, meeting halls, and other places where notices to members are customarily posted and, with permission, at the Employer's Huntsville, Alabama facility copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 10, 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 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) Notify the Regional Director in writing within 20 days from the date of this Order what steps it has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges unfair labor practices not found.

¹⁰If 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."

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 accept checked-off dues or refuse to honor any employee's revocation of his dues-checkoff authorization after the employee has resigned union membership and no longer owes union dues.

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 make Richard M. Holcombe whole, with interest, for any moneys deducted from his wages as union dues following his resignation from union membership and revocation of his checkoff authorization.

UNITED RUBBER, CORK, LINOLEUM AND
PLASTICS WORKERS OF AMERICA, AFL-
CIO-CLC AND ITS LOCAL #915