

Automotive, Petroleum and Allied Industries Employees Union, Local 618 (Sears, Roebuck and Company) and Eric W. Becker. Case 14-CB-7803

October 29, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

The central question in this case is whether the Respondent violated Section 8(b)(1)(A) by soliciting, maintaining, and enforcing contracts with individual employees under which the employees agree to pay “financial-core” fees to the Union for the duration of the Union’s representation of the employees, or for the duration of their employment, whichever is shorter.¹

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The Employer and the Union have been parties to successive collective-bargaining agreements. The agreement in place at the time of the events at issue here was effective from August 1, 1988, through July 31, 1991. This agreement did not contain any union-security provision. Thus, no employee was required, as a condition of employment, to provide financial support to the Union.

Prior to the expiration of the 1988–1991 agreement, the union steward informed unit employees at the Chesterfield facility that unless a sufficient number of employees paid dues to the Union, the Union could not afford to continue to represent the employees. Employees were told that they did not have to join the Union, but those who did wish to join would have to sign a “financial-core” agreement. This document states in pertinent part:

For and in consideration of the Agreement of Teamsters Local Union No. 618 to continue to act and serve as my collective bargaining representative as a Sears employee in an appropriate collective bargaining unit, I agree to become a financial-core member of the Union and pay the fees uniformly charged to financial-core members during the term of my employment by Sears. I understand that the fees which financial-core members are required to pay to the Union at the present time is \$— per month; but I am aware that those fees may change from time to time, and I will

¹ On March 30, 1993, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a brief in support.

agree to pay any adjusted amounts upon notification from the Union.

I understand that nothing contained in this Agreement requires me to become or remain a member of the Union, or restricts my right to join or resign from the Union as I see fit; and the amounts I have agreed to pay to the Union as a financial-core member have no connection with union membership in any way whatsoever.

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This agreement shall terminate on the termination of my employment by Sears or at such time as the Union is no longer my collective bargaining representative, whichever is earlier.

Some of the employees at the Chesterfield facility chose not to join the Union. All of the employees who chose to join the Union, or who were already union members and chose to remain members, signed financial-core agreements.

On October 16, 1991, Charging Party Eric Becker signed a financial-core agreement after first attempting to sign only a membership application. In February 1992, Becker called the Union and spoke with clerical employee Kim Miller. He told her that he had not been advised of the amount he was to pay in monthly dues or how he was to pay off the initiation fee. Miller told Becker he owed \$50 as an initiation fee and 5 months of back dues at \$16 dollars per month.

Becker said he would pay the initiation fee, but that it was not fair to charge him for the back dues because he had not received the information as to the amount due. Miller insisted that Becker pay the back dues, and Becker responded that, if that was the case, he wanted to resign from the Union. Miller then told him he could not resign from the Union, and that the only way to resign was to go into a management position or quit Sears.

The judge found, and we agree, that Miller, as the daughter of the Union’s chief executive officer, and as a clerical employee who routinely answers employees’ questions about dues, had at least apparent authority to speak for the Union regarding dues, fees, membership, and resignation. Thus, in those respects, she acted as an agent of the Union. Accordingly, we adopt his finding that the Union violated Section 8(b)(1)(A) by Miller’s statements to Becker regarding resignation.²

² The relevant portions of Sec. 8(b)(1)(A) and Sec. 7 are:

Sec. 8(b). It shall be and unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

Continued

The judge further found that by soliciting, maintaining, and enforcing the financial-core agreements, the Union also violated Section 8(b)(1)(A). In so finding, the judge rejected the General Counsel's contention that the agreements were not voluntarily obtained. He concluded, nevertheless, that the agreements were unlawful because they were not revocable by the employees after "a reasonable period of time." We disagree.

Generally, the internal affairs of a union do not come within the purview of the Act. In fact, only in two respects can the internal affairs of a union implicate the statute. The first is that employment status of an employee is affected. This is the teaching of *Radio Officers Union v. NLRB*, 347 U.S. 17 (1954).³ In that decision, the Court held that "[t]he policy of the Act is to insulate employees' jobs from their organizational rights. Thus, Section 8(a)(3) and Section 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad or indifferent members, or abstain from joining any union without imperiling their livelihood."⁴ Since employment status is not involved in the instant case, the Charging Party was not deprived "of the right guaranteed by the Act to join in or abstain from union activities without thereby affecting his job."⁵

The second way in which the Act can be implicated is through a showing that a union's actions are contrary to an overriding policy contained in national labor law. Thus, although the Court in *NLRB v. Allis-Chalmers*, 388 U.S. 175 (1967), stated that "Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulation to affect a member's employment status,"⁶ it noted that certain issues, such as "whether 8(b)(1)(A) proscribes arbitrary imposition of fines, or punishment for disobedience of a fiat of a union leader" were not presented in that case.⁷ The reasoning of *Allis-Chalmers* and its progeny rests on the theory that the right to refrain from union activity under Section 7 may be unlawfully affected by certain union actions. Thus, notwithstanding the fact that the issue of employment status is not present as in *Radio Officers*, the statute still may be violated by certain internal union actions.

In subsequent cases, the Court developed its standard for determining whether fines or other union discipline violated Section 8(b)(1)(A) of the Act. Thus, in

NLRB v. Marine & Shipbuilding Workers, 391 U.S. 418 (1968), the Court reiterated that the proviso to Section 8(b)(1)(A) "assures a union freedom of self-regulation where its legitimate internal affairs are concerned,"⁸ but held that a union acted unlawfully when it expelled a member for failing to exhaust internal union remedies before filing charges with the Board, since, in the Court's view, access to remedies under the Act was beyond the internal affairs of the union.⁹

Subsequently, in *Scofield v. NLRB*, 394 U.S. 423 (1969), the Court summarized its holdings in this area by stating that although it is not the function of the Board to judge "the fairness or wisdom of particular union rules, it has become clear that if the rule invades or frustrates an overriding policy of the labor laws, the rule may not be enforced, even by fine or expulsion, without violating Section 8(b)(1)."¹⁰ Thus, the Court continued, "Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule."¹¹ Under that test, the Court concluded that a union acted lawfully in fining employee-members for violating a union rule prohibiting employee-members from exceeding a piece-work ceiling and accepting pay for it on a schedule other than that approved by the union.

Although the Supreme Court was addressing an internal union rule in *Scofield*, this framework is equally applicable to the situation in this case, involving the financial-core agreement individually entered into by the Charging Party and the Union. Under this framework, we find no violation here.

The circumstances here involve an internal union matter; a contract between the Charging Party and his union, individually and voluntarily entered into.¹² The

Sec. 7. Employees shall have the right to . . . engage in . . . concerted activities . . . and shall also have the right to refrain from any or all such activities.

³ Chairman Gould notes that in that decision, the Court characterized the Act as a bulwark against discrimination in seniority, wages, and other conditions of employment.

⁴ 347 U.S. at 40 (footnote omitted).

⁵ 347 U.S. at 42.

⁶ 388 U.S. at 195.

⁷ *Id.*

⁸ 391 U.S. at 424.

⁹ *Id.* at 427.

¹⁰ 394 U.S. at 428

¹¹ *Id.* at 430.

¹² The General Counsel argued that the financial-core agreement was signed under duress because the Union informed employees that unless more of them became members of the Union, the Union would not be able to represent them any longer. The General Counsel also objected to the fact that the Union required that each employee who wished to join the Union sign the financial-core agreement.

We note that it is not unlawful for a union to tell employees that unless a sufficient number of employees sign such agreements, the union could not afford to continue representing the employees. Such a statement by a union simply conveys an economic reality to the employees. For this reason, we agree with the judge that the financial-core agreements were not coercively obtained.

only arguable infringement on the Charging Party's Section 7 rights by the individual contract in this case involves the Charging Party's agreement to pay fees to the Union as long as he remains in the unit and the Union continues to represent the unit. The financial-

We emphasize that the collective-bargaining agreement here does not contain a union-security clause, which would affect the employment relationship between employees and employers, and could potentially implicate the Act. In addition, we note that the financial-core agreement states that there is no requirement that an employee become a member of the Union and that there are no restrictions on resignation from union membership. Employees were required to sign the agreement if, and only if, they chose to become or remain union members. Thus, employees were free to join or not join the Union, and if an employee did choose to join, he or she was free to resign at any time.

The judge found a violation based on the fact that financial-core agreement here is "limitless as to time," and that it was contrary to the statutory scheme to permit a union to so burden an employee's right to refrain from assisting a union. Although the judge acknowledged that the Board has recognized that an employee may, by a clear and explicit waiver, waive the Section 7 right to refrain from financially supporting a union,¹⁴ the judge reasoned that any such waiver must be read in light of the policy considerations underlying Section 302(c)(4) of the Act¹⁵ as well as other portions of the statute. In so doing, the judge concluded that it was

core agreement does not require that an employee abide by the Union's bylaws or constitution, or prohibit an employee from engaging in or refraining from any activity in support of or in protest against the Union. In essence, what the Charging Party has done is to sign a contract which provides that he pay an amount of money equal to that paid by financial-core members, in exchange for the Union continuing to serve as the collective-bargaining representative for employees in the unit. Such an agreement reflects a legitimate union interest in gaining financial support from the unit employees it represents and impairs no policy imbedded in the national labor laws.¹³

¹³ Our dissenting colleague asserts that, absent a union-security agreement, a union cannot charge employees for representational services it is already legally obligated to provide. The union here is not "charging" any employee for services: it is asking employees to voluntarily agree to pay for such services. Moreover, as the union made clear at the time it solicited employees to sign the agreements, without a commitment of financial support from a sufficient number of employees, it would not be able to afford to continue to represent the unit. Thus, the services that employees obtained by signing the agreement were services that the union might well not have otherwise provided.

¹⁴ *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367, 368 (1991) (the explicit language in the dues-checkoff authorization clearly authorized dues deduction even in the absence of union membership); *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328 (1991). Chairman Gould agrees that the principle of clear and explicit waiver of a statutory right is applicable here, but finds it unnecessary to rely on *Lockheed*, and expresses no view as to the viability of *Lockheed's* holding.

unlawful for the Union to seek such a waiver because of the duration of the agreement.

Here, the Charging Party clearly and unmistakably agreed to pay the required dues pursuant to the terms of the agreement without regard to his union membership for the duration of his tenure with the employer or until the Union ceased to represent him, whichever occurred first. Thus, though the financial-core agreement is not limited in time, it is limited in amount and does not in any other way restrict the employee in the exercise of his or her Section 7 rights. Accordingly, even if a right protected by the Act was implicated by this agreement, the Charging Party clearly and unequivocally waived his right to refrain from supporting the Union, and no violation occurred because there is nothing in the national labor policy against such an agreement.

Our dissenting colleague, citing *Lockheed*, attempts to equate the Section 7 right to resign upheld in *Pattern Makers*, 473 U.S. 95 (1985),¹⁶ with the right to refrain from paying dues. The Board in *Lockheed*, however, specifically recognized that remaining a member and paying dues are two distinct actions and that an employee can voluntarily agree to pay dues even when he or she is no longer a member of the Union.¹⁷ The Board stated that

Our review of statutory policies and contractual principles persuades us that there is no reasonable basis for precluding an employee from individually agreeing that he will pay dues to a union whether or not he is a member of it¹⁸

¹⁵ Sec. 302(c)(4) involves dues-checkoff authorization agreements, which are limited to a 1-year period of irrevocability.

¹⁶ Chairman Gould is of the view that the statute as written does not provide for a "fundamental right to be free to resign from union membership." It is true that the Supreme Court in *Pattern Makers* stated that "union restrictions on the right to resign [are] inconsistent with the policy of voluntary unionism implicit in Section 8(a)(3)." 473 U.S. at 104. But the deciding vote cast in that 5-4 decision was predicated on deference to the Board's exercise of its expertise. *Id.* at 116-117. Indeed a substantial part of Justice Powell's majority opinion in *Pattern Makers* is similarly rooted in this policy. *Id.* at 114-115. As Chairman Gould more fully set forth in *California Saw & Knife Works*, 320 NLRB 224, 236 fn. 64 (1995), he does not believe that the National Labor Relations Act provides for a "fundamental right to be free to resign from union membership." Rather, his view is that the statute provides for a policy of carefully taking into account the competing rights to engage in concerted activity and to refrain from so engaging. Accordingly, he believes that the Act permits reasonable restrictions to be placed on an employee's right to resign. What is paramount in determining the lawfulness of such a restriction is the employee's ability to make an informed decision prior to the time that resignation is restricted, and whether an employee's right to resign has been properly balanced against the union's legitimate concerns. See William B. Gould, *Solidarity Forever—or Hardly Ever: Union Discipline, Taft-Hartley, and the Right of Union Members to Resign*, 66 Cornell L. Rev. 74 (1980).

¹⁷ 302 NLRB at 328.

Thus, the limitations that *Pattern Makers* imposes on the right to resign do not apply to a voluntarily entered into agreement to pay dues.

Our dissenting colleague acknowledges that *Lockheed* held that an employee can lawfully agree to continue paying dues to a union even after resignation from the union. He then notes that the agreement was part of a checkoff authorization and therefore limited in time. He suggests that if the agreement at issue here was similarly limited in time it may well be lawful, but contends that its extension through the duration of the Union's representation of the unit employees somehow contravenes "a policy embedded in the nation's labor laws."¹⁹ We disagree.

We see nothing warranting a finding that the statute in any way prohibits a *voluntary* agreement to pay the fees that financial-core members pay so long as the union serves as the employees' representative. Indeed, under the 8(a)(3) union-security proviso, Congress allows unions to negotiate and enforce union-security clauses that are binding, at least for financial-core purposes, on employees whether they consent or not. And, assuming the employer agrees to include such clauses in successive collective-bargaining agreements, a union may secure financial-core support for the duration of its representation, just as it seeks to do through these agreements. Since union-security clauses may result in discharge for nonpayment of dues, it is difficult to see how the voluntary financial-core agreements at issue here, which pose no threat to job status, can be said to offend the policies of the Act merely because of their duration.²⁰

Furthermore, if the employee is dissatisfied with the representation the employee is free to seek the support of his or her fellow employees for a decertification election. If the Respondent were to lose an election the

¹⁹In this regard our dissenting colleague takes contradictory positions. On the one hand he asserts that there can be no "fee" for representation even when, as here, employees have voluntarily agreed to make such payments. On the other hand he suggests that he would find such agreements lawful if they are limited in time. As discussed above, we find that both the agreement to pay dues and the further agreement to pay the dues while represented are lawful under the National Labor Relations Act.

²⁰Member Fox finds the analogy to Sec. 302(c)(4), requiring that employees be afforded periodic opportunities to revoke authorizations for dues checkoff, to be inapposite. As the Board recognized in *Lockheed*, dues checkoff is a method by which an employee can meet his or her dues obligations. Where an employee is otherwise obligated—by a union-security clause or by some other agreement entered into by the employee—to pay dues or fees to a union, the employee's decision not to authorize dues checkoff or to revoke a dues-checkoff authorization previously granted does not relieve the employee of his or her financial obligations to the union. It simply means that the employee must make other arrangements for paying the dues or fees owed directly to the union rather than having those monies automatically deducted from his or her wages and forwarded to the union by the employer. The "financial-core" agreement at issue here does not provide for or authorize deductions from wages and thus does not implicate the policies underlying Sec. 302(c)(4).

employee would be free of any obligation to pay dues under the terms of the individual agreement to pay dues. Of course, if the Respondent were to win the election the Respondent would continue to represent the employee and the employee would, as he or she voluntarily agreed, be required to pay for that representation.²¹

Accordingly, we find that because the Act is not implicated under either *Radio Officers* or *Allis-Chalmers* and its progeny, and because the Charging Party freely and voluntarily chose to sign the financial-core agreement, and the agreement clearly states on its face that the payment of the financial-core dues were not related to union membership and would continue for the duration of the Charging Party's tenure at Sears or until the Union no longer represents him, the financial-core agreement does not violate Section 8(b)(1)(A) of the National Labor Relations Act in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Automotive, Petroleum and Allied Industries Employees Union, Local 618, St. Louis, Missouri, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Informing employees that they cannot resign from the Union.

(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) Within 14 days after service by the Region, post at its St. Louis, Missouri, facility copies of the attached notice marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps

²¹Our dissenting colleague asserts that a union may not "restrict indefinitely" an employee's right to refrain from paying dues and that "it is contrary to the spirit of the statute and the general rule of contracts to require that agreements with no period of duration are to last forever." Assuming *arguendo* that both propositions are true, neither is applicable to the agreement at issue here. As to the first, to the extent that the agreement limits a signer's ability to cease supporting the union, the limitation is not a union-imposed restriction but one which a solicited employee is free to accept or reject. As to the second, under the terms of the agreement, the obligation to pay dues to the union does not "last forever" but continues only as long as the signer remains a unit employee and the union retains its status as the unit's majority representative.

²²If 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."

shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 14 with signed copies of the notice for posting by Sears, Roebuck and Company at its St. Louis, Missouri, metropolitan area facilities, if willing, in places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HIGGINS, dissenting.

The central question in this case is whether the Respondent violated Section 8(b)(1)(A) by soliciting, maintaining, and enforcing agreements which obligate unit employees to pay “financial-core” fees to the Union for the duration of the Union’s representation of the unit or of their employment tenure, whichever is shorter.

My colleagues conclude that the Respondent did not violate the Act by the afore-mentioned conduct. I agree with the judge that the conduct was unlawful. In my view, a provision which operates to waive, for a substantial and indefinite period, the Section 7 right to refrain from supporting the Union is not to be countenanced by the Act.

In *Pattern Makers*,¹ the Supreme Court upheld the Board’s view that a restriction on the Section 7 right to resign, embodied in a union bylaw, was invalid. Since the restriction was invalid, the employee resignations were effective, and the union violated Section 8(b)(1)(A) by fining the employees for postresignation conduct. In cases before and after *Pattern Makers*, the Board has held that a restriction on resignation, embodied in a union constitution or bylaw, violates Section 8(b)(1)(A) of the Act.²

Concededly, the instant case involves the right to refrain from paying money to a union, rather than the right to refrain from union membership. However, both rights are guaranteed by Section 7. As the Board clearly stated in *Lockheed*:³

We merely hold that the policy of “voluntary unionism” that informs the Supreme Court’s decision in *Pattern Makers* with regard to remaining, or declining to remain, a union member also logically relates to other forms of union activity.

¹ *Pattern Makers v. NLRB*, 473 U.S. 95 (1985).

² *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984); *Auto Workers Local 73 (McDonnell Douglas)*, 282 NLRB 466 (1986).

³ *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)* 302 NLRB 322, 328 (1991).

The “other form of union activity” involved in *Lockheed* was the right to refrain from paying dues to the union.

Based on the above, I conclude that a restriction on refraining from paying dues to the union impairs Section 7 rights, just as does a restriction on resigning from the union.

In *Pattern Makers*, it made no difference that the employee voluntarily became a union member and agreed to be bound to the union’s constitution and bylaws. The overriding concern was that the employee be free thereafter to exercise the Section 7 right to resign.

Similarly, it makes no difference here that the employee voluntarily becomes a member and agrees to be bound to the promise to continue paying dues. The overriding concern is that the employee be free thereafter to exercise the Section 7 right to refrain from paying dues.

I recognize that the restriction in *Pattern Makers* was embodied in a union constitution, while the restriction here is in an individual agreement between the employee and the union. In *Pattern Makers*, the union argued that the employee, in joining the union, had implicitly agreed to the constitutional provision and thus should be bound to a promise not to resign. The Court rejected the argument. The Court said that a “promise” made in this manner was “unlike any other in traditional contract law.”⁴ The vice was that the promise purported to waive an important statutory right. Similarly, the promise here, made in an individual agreement, is unlike a traditional contractual promise. The vice is that the promise waives an important Section 7 right for an indefinite period.⁵

As noted above, the Board has previously considered individual agreements to waive Section 7 rights, including the Section 7 right involved herein, viz, the right to refrain from giving financial support to a union. In *Lockheed*, supra, the Board held, inter alia, that an employee could lawfully agree to continue paying dues to a union (through the checkoff mechanism) even after resignation from the union.⁶ However, the individual agreement in *Lockheed* was contained in the individual’s checkoff authorization. As a matter of law, such an agreement must be made revocable at periodic intervals, i.e., upon the anniversary of the signing of the checkoff or upon the expiration of the collective-bargaining agreement, whichever occurs sooner.⁷ By contrast, the agreements here are not limited to 1-year periods or to the expiration of a contract. If the agreements had been so limited in time, that may well have

⁴ 473 U.S. at 113, fn. 26.

⁵ So long as the union remains the representative, the employee can escape the obligation only by quitting his unit employment.

⁶ *Lockheed*, 302 NLRB at 329. Such an agreement must be clear and unequivocal.

⁷ Sec. 302(c)(4) of the Act.

been reasonable and lawful. However, as discussed above, the time limitation is open ended. Indeed, so long as the union is the representative, the employee can resign only by quitting his employment. In these circumstances, the restraint on Section 7 rights is unreasonable and unlawful.

My colleagues rely on the *Scofield* principle that a union regulation is permissible if it meets certain criteria. However, the most elemental of these criteria is that the employee-member must be free to resign from union membership and thereby avoid the regulation. In the instant case, the employee can resign from membership, but he/she is still obligated to pay the dues. Thus, at the most basic level, the *Scofield* criteria are not met.⁸

The Union's conduct also fails under another of the *Scofield* tests. My colleagues acknowledge, as they must, that internal union rules are unlawful if they contravene a policy embedded in the nation's labor laws. As set forth above, the right to refrain from paying dues to a union is clearly embedded in Section 7. It is subject to restraint only by a union-security clause or by a voluntary checkoff limited in time by Section 302(c)(4). The instant case does not involve union security, and the time limitations of Section 302(c)(4) are not present.

Member Fox rejects the analogy to checkoffs, arguing that checkoff involves the deduction of dues from wages. However, just as employees have a Section 7 right to refrain from having dues deducted from wages, they have an even more fundamental right to refrain from paying dues at all (in the absence of a union-security clause). Accordingly, since the former right cannot be restricted for an indefinite period [See Sec. 302(c)(4)], a fortiori the latter right cannot be so restricted.

My colleagues say that the employee's agreement to pay dues indefinitely is a contract. It is nothing of the kind. The union owes all unit employees a duty of fair representation, irrespective of whether they pay dues. Thus, the dues are not a quid-pro-quo consideration for the service of representation, because the service must be provided irrespective of the dues.⁹ Of course, employees can voluntarily agree to pay the dues. The issue in this case is whether that agreement can lawfully endure for an indefinite period. I conclude that it cannot. This conclusion is not inconsistent with my

⁸My colleagues contend that the restriction at issue "is not a union-imposed restriction but one which a solicited employee is free to accept or reject." This is true only in the sense that the employee is free not to join the union in the first place. The problem here is that those who do join are impermissibly restricted from later refraining from paying dues, even if they resign from membership.

⁹The union can charge dues for representation, through a union-security clause. However, there is no such clause in the instant case.

view that such an agreement can lawfully endure for a reasonable period.

My colleagues also assert that, without a sufficient number of employee agreements, the Union would not represent the employees. However, the term "sufficient" is hopelessly imprecise, the matter was never reduced to writing, and there is no evidence that any employee signed the agreement to forestall Union abandonment of the unit. Thus, this aspect of the employee agreement hardly qualifies it as a contract.

In sum, the Union has restricted indefinitely the employees' fundamental right to refrain from paying dues. It is contrary to the spirit of the statute and the general rule of contracts to require that agreements with no period of duration are to last forever.¹⁰ Rather, the proper test is one of reasonableness, and it is unreasonable to bind employees for their entire employment period in the unit.

¹⁰"It is generally the rule that a contract for an indefinite period, which by its nature is not deemed to be perpetual, may be terminated at will on giving reasonable notice." Corpus Juris Secundum, Contracts Sec. 398.

My colleagues say that the agreement does not "last forever." I agree that it does not. However, the agreement is for an indefinite period of time, and such agreements may not lawfully last forever. They must be revocable upon reasonable notice. The instant agreement is not revocable upon notice. It is thus not lawful.

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 inform employees that they cannot resign from the Union.

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.

AUTOMOTIVE, PETROLEUM, AND ALLIED
INDUSTRIES EMPLOYEES UNION, LOCAL
618

Kathleen Fothergill, Esq., for the General Counsel.
Clyde E. Craig, Esq., of Saint Louis, Missouri, for the Respondent.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge. Upon a charge filed on March 6, 1992, and an amended charge filed on August 31, 1992, by Eric W. Becker, an individual,

against Automotive, Petroleum and Allied Industries Employees Union, Local 618 (the Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, issued a complaint dated August 31, 1992, alleging violations by Respondent of Section 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act (the Act). Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, trial was held before me in St. Louis, Missouri, on October 14, 1992, at which the General Counsel and the Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

On the entire record in this case, and from my observations of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Sears, Roebuck and Company, a corporation, duly authorized to do business in the State of Missouri, operates retail stores and automotive service stations throughout the St. Louis metropolitan area, including a facility located in Chesterfield, Missouri. Sears is engaged in the retail sale and distribution of clothing, household goods and related products, and the performance of automotive service work. During the 12-month period ending July 30, 1992, Sears, in the course and conduct of its business, derived gross revenues in excess of \$500,000 from the operation of the St. Louis area facilities, and purchased and received, at its Chesterfield facility, products, goods, and materials, valued in excess of \$50,000, which were sent directly from points located outside the State of Missouri. I find that Sears, Roebuck and Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

Respondent is the collective-bargaining representative of Sears employees working at various service station facilities in the greater St. Louis metropolitan area. Sears and the Union have been parties to successive collective-bargaining agreements, the most recent of which is effective for the term August 1, 1991, to July 31, 1994. The prior agreement was for the term August 1, 1988, to July 31, 1991, and, like its successor, did not contain union-security provisions.

On August 16, 1991, the Board adopted, in the absence of exceptions, the decision of Administrative Law Judge Stephen J. Gross in Cases 14-CB-6044 and 14-CB-7648-1. In those cases, Judge Gross found that the Union, during the term of the 1988 to 1991 agreement, and during the term of prior agreements, violated Section 8(b)(1)(A) of the Act by refusing to accept the membership resignations of unit employees, and by soliciting, maintaining, and enforcing individual membership contracts restricting the right of signatory employees to resign from membership in the Union.

In the instant case, the General Counsel contends that Respondent violated Section 8(b)(1)(A) of the Act, during the 1991-1992 period, and thereafter, by informing employee Becker that he could not resign from the Union, and by requiring unit employees to execute individual contracts mandating payment of "financial-core" fees for the duration of union representation. The General Counsel argues that, by maintaining and enforcing such agreements, Respondent further violated the Act. Respondent denies that it told Becker that he could not resign from the Union, and urges that the solicitation, maintenance, and enforcement of the individual "financial-core" agreements was lawful.

B. Facts²

As noted, the 1988-1991 contract expired on July 31, 1991. Prior to that date, in the spring of 1991, and until the new contract was signed early in 1992, the Union, through its steward, Bobby Blackmon,³ on various occasions, informed unit employees at the Chesterfield facility that, unless a sufficient number of them paid dues to the Union, it could not afford to continue to represent the employees. Blackmon distributed to the employees new membership applications, as well as "financial-core" agreements, and advised employees that they had to sign the agreement in order to join the Union. This document provided:

AGREEMENT

For and in consideration of the Agreement of Teamsters Local Union No. 618 to continue to act and serve as my collective bargaining representative as a Sears employee in an appropriate collective bargaining unit, I agree to become a financial-core member of the Union and pay the fees uniformly charged to financial-core members during the term of my employment by Sears. I understand that the fees which financial-core members are required to pay to the Union at the present time is \$ _____ per month; but I am aware that those fees may change from time to time, and I will agree to pay any adjusted amounts upon notification from the Union.

I understand that nothing contained in this Agreement requires me to become or remain a member of the Union, or restricts my right to join or resign from the Union as I see fit; and the amounts I have agreed to pay to the Union as a financial-core member have no connection with union membership in any way whatsoever.

²The factfindings contained herein are based upon a composite of the documentary and testimonial evidence introduced at trial. Where necessary to do so, in order to resolve significant testimonial conflict, credibility resolutions have been set forth, *infra*. In general, I have relied, fully, on the testimony of employees Gary Hedden and Roger Green, and former employee Eric Becker, all of whom impressed me as honest and forthright witnesses. I have accorded less weight to the testimony of the Union's steward, Bobby Blackmon, in view of his evasiveness as a witness and the confusing nature of portions of his testimony. I have also viewed with suspicion the testimony of the Union's office clerical employee, Kim Miller, in light of my impressions of her demeanor as a witness.

³At trial, the parties stipulated that Blackmon is an agent of the Union within the meaning of Sec. 2(13) of the Act in that he has authority to handle and adjust contractual grievances on the Union's behalf, and to speak for it with respect thereto.

I agree that in the event that it is necessary for the Union to file suit to enforce this Agreement or collect any amounts due thereunder, I will pay all costs and expenses in connection with such suit, including reasonable attorney's fees.

This Agreement shall terminate on the termination of my employment by Sears or at such time as the Union is no longer my collective bargaining representative, whichever is earlier.

Signed at St. Louis Missouri on this _____ day of _____, 1991.

Members Signature _____

Members So. Sec. # _____

STORE LOCATION _____

Accepted by Teamsters Local Union No. 618

BY _____

DATE _____

All of the unit employees at the Chesterfield facility, who were or became members of the Union, signed "financial-core" agreements. Most did so in March and April 1991, while others did not sign agreements until September or October of that year. Still others signed neither membership applications, nor agreements, and did not become members of the Union. The agreements, which were similarly distributed at other facilities, were maintained and enforced by the Union.

Charging Party Eric Becker credibly testified that, in September or October 1991, while contract negotiations were ongoing, he spoke to Blackmon about joining the Union. Blackmon gave him a membership application and a "financial-core" agreement form. When Becker asked if it was true that the Union would drop the shop absent sufficient employee participation, Blackmon stated, yes. Thereafter, Becker signed the membership application, only, and sent it to the Union's office. He did not sign the agreement.

Some 2 weeks later, Becker and employee Roger Green approached Blackmon.⁴ According to the credited testimony of Becker and Green, Green attempted to turn in a signed membership card, only. Blackmon told him that he had to sign the agreement, too, in order to join the Union. When Becker stated that he had sent to the Union a membership card, but not an agreement, Blackmon told him that he, too, had to sign the agreement to become a union member. Thereafter, in early October, Green signed the agreement and turned it in to Blackmon. On October 16, Becker signed an agreement form and sent it to the Union.

In February 1992, Becker placed a telephone call to the Union and spoke with clerical employee Kim Miller. He told her that he had not been advised of the amount he was to pay in monthly dues, or about how he was to pay off the initiation fee. Miller told Becker that he owed to the Union a \$50 initiation fee and 5 months of back dues, at \$16 per month, for a total of \$80 in back dues. Becker stated that he would pay the initiation fee but that it was not right to charge him for back dues as he had not received information as to the amount due per month. Miller insisted that Becker

pay the back dues. Becker responded, stating that, if that were the case, he would pay the amount demanded by Miller and, then, "I want out of the Union." According to Becker's credited testimony, Miller then told him that "you cannot resign from the union . . . the only way to resign from the union would be to go into a management position or to quit Sears."⁵

On February 24, 1992, Becker sent a resignation letter to the Union and enclosed a check for \$130, covering the initiation fee and 5 months of back dues. On March 2, he received a letter from the Union, signed by Bob Miller, the Union's chief executive officer, stating that the Union "will construe your letter of February 24, 1992, as a request to convert to financial-core membership status," by virtue of which \$14.74 per month would be due and owing. On March 9, Becker sent to the Union another letter, stating that he was not a financial-core member and would pay no form of dues, whatsoever. In response, the Union, on April 1, sent to Becker a brief letter, along with a copy of the agreement he had signed in October 1991.

Clerical employee Kim Miller, the daughter of Respondent's chief executive officer, as part of her duties, takes and gives messages. She sends out computer-generated billing statements, delinquency notices, and other letters in her name as union representative. She has sent a letter, or letters, signed by her, to an employee to advise him that "it is not possible for you to resign from the Union." She receives the questions of unit employees regarding their dues, and answers those questions. Steward Blackmon testified that he directs employees' questions regarding dues, resignation, and the "financial-core" agreement, to her. In these circumstances, I find that Miller has, at the least, apparent authority to speak for the Union regarding dues, fees, membership, and resignation and is, in those regards, an agent of the Union within the meaning of Section 2(13) of the Act.⁶

C. Conclusions

As shown in the statement of facts, in February 1992, Respondent, by its agent, Kim Miller, informed employee Becker that he could not resign from membership in the Union. As a union lawfully may not restrict the Section 7 right of its members to resign, Respondent-Union thereby violated Section 8(b)(1)(A) of the Act, as alleged in the complaint.⁷

The Act also accords employees the right to refrain from financially supporting a union, but that right may be waived. Thus, even in the absence of contractual union-security provisions, employees may waive the statutory right by entering into individual agreements to pay dues or its equivalent, for example, by executing checkoff authorizations. In the case of checkoff, the authorizations lawfully may obligate the signatories to make periodic payments to the union, by means of payroll deduction, even in the absence of membership, and even after resignation from membership. Under Section 302(c)(4) of the Act, employers may honor such authoriza-

⁴Green credibly testified that, during an earlier conversation, Blackmon had explained to him that, after signing both the membership application and the agreement, an employee could resign from full union membership, but would have to remain a "financial-core" member.

⁵Miller, in her testimony, denied that she told Becker that he could not resign unless he took a management position or left his employment. For the reasons stated at fn. 2, her denial is not credited.

⁶See, e.g., *Hotel & Restaurant Employees Local 50 (Dick's Restaurant)*, 287 NLRB 1180 (1988).

⁷*Sheet Metal Workers Local 73 (Safe Air)*, 274 NLRB 374 (1985).

tions if they are voluntarily given and are irrevocable for a limited period, only.⁸

In this case, the record evidence fails to support the General Counsel's contention that the "financial-core" agreements signed by many of the unit employees were not voluntarily obtained. The Union, apparently, made the signing of such agreements a condition of membership which, absent union-security requirements, it had a right to do. It told the unit employees that, unless a sufficient number of them financially supported the Union, it could not afford to continue to represent them, that is, continue to act as their collective-bargaining representative beyond the expiration of the then current contract. This simple statement of the facts of industrial life did not transform the Union's appeal to the employees, to agree to contribute financial support to the Union, into a coercive solicitation. I conclude that the signed agreements were the product of wholly voluntary action on the part of the employees.⁹

However, I further conclude that, by soliciting the signatures of the unit employees on the "financial-core" agreements, and by maintaining and enforcing those agreements, Respondent restrained and coerced employees in the exercise of their Section 7 rights, in violation of Section 8(b)(1)(A) of the Act. I reach this conclusion because the "financial-core" agreements, as written, do not limit the irrevocable obligations of the signatories, to make periodic payments to the Union, to a reasonable time period. Rather, by signing the agreements, according to their terms, employees irrevocably waived their statutory right to refrain from financially supporting the Union until they terminated their employment or the Union ceased to act as their collective-bargaining representative. In practical terms, the irrevocable obligation to make payments is limitless as to time.

While, in *Lockheed*, supra, the Board stated that "there is no reasonable basis for precluding an employee from individually agreeing that he will pay dues to a union, whether or not he is a member of it. . . . Neither is there a reasonable basis for precluding enforcement of such an agreement" I think, nonetheless, that it is contrary to the statutory scheme to permit a union so to burden the exercise of a fundamental statutory right as to allow it to solicit, maintain, and enforce an irrevocable waiver of the right which is not limited to a reasonable period of time. In the case of checkoff, Section 302(c)(4) of the Act specifically limits the irrevocable period of the authorization, under which an employer lawfully may remit dues payments, to not more than 1 year, or the termination date of the applicable collective-bargaining agreement, whichever occurs sooner. While the statute does not contain a provision specifically limiting the irrevocable period of an agreement to pay dues or its equiva-

lent, by checkoff or otherwise, which may be solicited, maintained, and enforced without running afoul of the provisions of Section 8(b)(1)(A) of the Act, that Section must be read in light of the policy considerations underlying Section 302(c)(4),¹⁰ and other portions of the statute, including the policy of voluntary unionism recognized by the Supreme Court in *Pattern Makers v. NLRB*.¹¹ In this connection, I note that in *Lockheed*, the Board emphasized that the waiver, by explicit language, of the statutory right to refrain from financially supporting a union, which, generally, it coun-tenanced there in the checkoff context, was one effective for a limited period of time.

In light of the foregoing statutory policies and provisions, and the guiding case law, I conclude that a union violates Section 8(b)(1)(A) of the Act by soliciting, maintaining, and enforcing agreements by employees to waive their statutory right to refrain from financially supporting a union, where, as here, such agreements are not revocable after a reasonable period of time.

REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Sears, Roebuck and Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, Automotive, Petroleum and Allied Industries Employees Union, Local 618, is a labor organization within the meaning of Section 2(5) of the Act.

3. By informing an employee that he could not resign from membership in the Union, Respondent engaged in unfair labor practice conduct within the meaning of Section 8(b)(1)(A) of the Act.

4. By soliciting, maintaining, and enforcing agreements with employees under which signatory employees agree, irrevocably, to pay "financial-core" fees to the Union for a period of unreasonable duration, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(b)(1)(A) of the Act.

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

[Recommended Order omitted from publication.]

⁸*Electrical Workers IBEW Local 2088 (Lockheed Space Operations Co.)*, 302 NLRB 322 (1991).

⁹Cf. *Bellkey Maintenance Co.*, 270 NLRB 1049 (1984).

¹⁰In *Lockheed*, the Board observed that Congress, in enacting Sec. 302(c)(4), sought, inter alia, to ensure that once an individual authorization was given, an employee was to be afforded periodic opportunities to reconsider the original decision.

¹¹473 U.S. 95 (1985).