to discharge Packard may of course been hastened by thoughts that Packard was a potential agitator of certain imagination and ingenuity in the gear department, but evidence to support such a motivation is extremely tenuous. In fact, it exists almost exclusively, if not entirely so, upon an evaluation of the circumstances that the Company had a comfortable and secured relationship with the shop committee, and did not want it to be disturbed. However, the facts that must be relied on without mere speculation is that Packard was a dissenting element who objected to the wage package. Equally clear are the facts that his objections registered through the cartoons caused concern in their pointed direction and personal attack on President Buehler. To my knowledge the Act does not protect malicious ridicule or flagrant misconduct, nor activity to destroy plant discipline, nor does it protect the misconduct of an employee who renders himself unfair for further service by his own individual deeds Moreover, the Company did not know that Packard was leading any group as openly acknowledged in Packard's own testimony, and to put the frosting on the cake, so to speak, the night-shift chairman of the shop committee, Joe Jones, stated that under the particular circumstances involved in this discharge he did not feel that Packard was unfairly treated. Neither do I. I conclude and find that on the record presented here a preponderance of the evidence does not support the complaint that Packard was discharged in violation of Section 8(a)(3) and (1) of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The allegations of the complaint that the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act have not been sustained.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that the complaint herein be dismissed in its entirety.

Penn Cork & Closures, Inc. *and* Alejandrino Vega Sustache *and* District Lodge No. 15 of the International Association of Machinists, AFL–CIO, Party to the Contract. *Case No. 29–CA–171. December 28, 1965*

DECISION AND ORDER

Upon charges duly filed on March 9, 1965, by Alejandrina Vega Sustache, an individual, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on June 22, 1965, against Penn Cork & Closures, Inc., herein called the Respondent, alleging that it had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (2) of the National Labor Relations Act, as amended. Copies of the complaint, the charge, and notice of hearing were duly served upon the Respondent and upon District Lodge No. 15 of the International Association of Machinists, AFL–CIO, Party to the Contract, and upon the Charging Party.

With respect to the unfair labor practices, the complaint alleged, in substance, that by continuing to deduct union membership dues under employee checkoff authorizations following union deauthoriza-

tion, membership resignations, and attempted revocations of checkoff, the Respondent has interfered with the Section 7 rights of its employees in violation of Section 8(a)(1), and has rendered unlawful assistance and support to a labor organization and contributed financial support to it in violation of Section 8(a)(2). On June 24, 1965, the Respondent filed an answer admitting the allegations in part and denying them in part, and alleging as an affirmative defense the irrevocability of the pertinent checkoff authorizations at the time in question.

On August 18 and 19, 1965, all parties entered into a stipulation which provides that the parties waive their rights to a hearing and to the issuance of a Trial Examiner's Decision. In lieu thereof the parties stipulated that the entire record of this proceeding shall consist of the stipulation, the charge, the complaint, and the answer. The stipulation further provides that the case is submitted directly to the Board for findings of fact, conclusions of law, and an order and requests that the Board set a time for the filling of briefs.

By an order issued on August 25, 1965, the Board approved the aforesaid stipulation, made it a part of the record herein, and transferred the matter to the Board.

Upon the basis of the aforesaid stipulation and the entire record in this case, including the briefs of the Respondent, the Union, and the General Counsel, the Board [1] makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Respondent is engaged in the manufacture, sale, and distribution of bottle caps, screw caps, and related products, with its principal office and place of business at 1155 Manhattan Avenue in the Borough of Brooklyn, New York, New York. It annually sells and ships goods valued at more than $50,000 directly to customers located outside the State of New York. We find that at all times material herein the Respondent has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 15, of the International Association of Machinists, AFL–CIO, Party to the Contract, is a labor organization within the meaning of Section 2(5) of the Act.

[1] Member Brown is not participating

III. UNFAIR LABOR PRACTICES

We are here concerned with the checkoff authorizations executed by some of the Respondent's employees in October and November 1964, pursuant to a collective-bargaining agreement between the Respondent and the Union effective until December 31, 1964. These authorizations by their terms are irrevocable for 1 year, or "up to" the termination date of the current contract, if sooner, except for 15-day periods after any irrevocable period, and continue in effect for yearly periods thereafter unless revoked in writing 15 days after any irrevocable period. This is the type of checkoff specified in the contract. It is also the type premissible by statute.[2] The contract also contains a union-security provision requiring membership as a condition of employment 90 days after hire and maintenance-of-membership thereafter. Pursuant to these 1964 checkoff authorizations, the Respondent began deducting dues from the wages of authorizing employees and transmitting the dues to the Union.

Thereafter, the Respondent and the Union, on December 30, 1964, entered into a new collective-bargaining agreement having identical union-shop and checkoff provisions, effective from January 1, 1965, to December 31, 1967.

On January 5, 1965, a deauthorization petition was filed in the Regional Office seeking to withdraw the authority of the Union to require membership as a condition of employment in the contract unit.[3] An election was held on January 29, 1965, at which a majority of unit employees eligible to vote cast their ballots in favor of deauthorization. On February 8, the Regional Director issued a certification of result to that effect and on February 25 a statement was signed by 57 employees, and delivered to the Respondent and the Union, informing the Union of the resignation of these employees from membership as of that date, and informing the Employer and the Union that "no dues shall be deducted from our wages." Nevertheless, the Employer, Respondent here, continued to deduct dues, as requested by the Union, and to hold them in a special fund. It notified its employees as follows:

> Union dues are being deducted from your pay check because we have a signed Authorization from you which, by its terms, cannot be revoked at this time. Your dues are being kept in a

[2] See Section 302(c)(4).

[3] Section 9(e)(1) of the Act provides for such petition, as follows. Upon filing with the Board, by 30 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such a unit and certify the results thereof to such labor organization and to the employer.

special fund. When the right to the dues has been judicially determined, the dues will be either refunded to you or paid to the Union.

At the time the checkoff authorizations in question were signed by the employees and at the time the deauthorization election was held, the contract required that the employees be union members as a condition of employment. The deauthorization election, however, had the effect, when certified by the Regional Director, of immediately suspending the union-shop provision of the contract.[4] After that it was no longer necessary for any employee in the unit to remain a member of the Union as a condition of continuing employment. Many employees took the opportunity to resign from membership, as they were entitled to do under Section 7 of the Act, thus exercising their statutory right as individuals to refrain from union activity in the absence of a union-shop provision.

The Union contends, however, that the right to discontinue union membership is not the right to revoke outstanding checkoff authorizations inasmuch as signing a checkoff authorization is optional with employees and not dependent upon the existence of union security.[5] Checkoff is optional, of course, but on the facts before us we cannot agree that the exercise of this option by employees is in all circumstances independent of the impact of union security. Here the Respondent and the Union had agreed to a contract containing both union-security and checkoff provisions. The contract not only required the employees to be union members but offered them the convenience of paying membership dues effortlessly through wage deductions which the Employer agreed to make. When executing these checkoff authorizations, the employees can hardly have been unmindful of the fact that they had to pay union dues. In these circumstances it would be unreasonable to infer that all employees who authorized the checkoff would have done so apart from the existence of the union-security provision and the necessity of paying union dues, or to infer that these same employees would, as a whole, wish to continue their checkoff authorizations even after the union-security provision was inoperative. Hence we conclude that when there has been an affirmative deauthorization vote, outstanding checkoff authorizations originally executed while a union-security provision is in effect become vulnerable to revocation regardless of their terms. The right of a majority of the employees to withdraw union-shop authority would indeed be an empty one if individually they could

[4] See *Monsanto Chemical Company*, 147 NLRB 49.

[5] The Respondent in its brief states that its position in this proceeding is "passive" or "stand by."

not thereafter cease paying union dues upon resigning from membership. Some employees may not avail themselves of this revocability feature following union deauthorization, but the right to avail themselves of it, which we here recognize, we believe is consistent with the congressional purpose of Section 9(e)(1) not to impose a union-security agreement upon an unwilling majority, as well as with the Board's well-established interpretation that deauthorization under Section 9(e)(1) is immediately effective.[6]

Accordingly, based on the record and stipulation now before us and for the reasons stated, we find that by continuing to deduct union membership dues pursuant to checkoff authorizations executed during the existence of a union shop by individual employees who had resigned from union membership and revoked their checkoff authorizations, after a majority of the unit employees had voted to withdraw the Union's authority to require under its bargaining agreement membership in the Union as a condition of employment, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has rendered unlawful assistance and support and contributed financial support to a labor organization, in violation of Section 8(a)(2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

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

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Penn Cork & Closures, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[6] See *Great Atlantic & Pacific Tea Company (National Bakery Division)*, 100 NLRB 1494, 1497; *Andor Company, Inc.*, 119 NLRB 925, 929; *Monsanto Chemical Company*, 147 NLRB 49, 51.

2. District Lodge No. 15 of the International Association of Machinists, AFL–CIO, is a labor organization within the meaning of the Act.

3. By continuing to deduct union membership dues pursuant to checkoff authorizations executed by individual employees during the existence of a union shop, after the employees had resigned from union membership following union deauthorization and had attempted to revoke their checkoff authorizations, the Respondent has violated Section 8(a) (1) and (2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Penn Cork & Closures, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Continuing to deduct union membership dues pursuant to checkoff authorizations executed by individual employees during the existence of a union shop, after an affirmative union deauthorization vote has been held and said employees have resigned from union membership and have attempted to revoke their said checkoff authorizations.

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

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

(a) Reimburse all present and former employees who signed checkoff authorizations in October and November 1964, and, who, after union deauthorization, resigned from union membership on February 25, 1965, and attempted to revoke their dues checkoff authorizations, for all sums improperly deducted from their wages in payment of union dues since that date, together with interest thereon at the rate of 6 percent per annum.

(b) Post at its plant in Brooklyn, New York, copies of the attached notice marked "Appendix."[7] Copies of said notice, to be furnished

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

by the Regional Director for Region 29, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

MEMBER BROWN took no part in the consideration of the above Decision and Order.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL refund to all present and former employees who signed checkoff authorizations in October and November 1964 and who, following union deauthorization, resigned from union membership on February 25, 1965, and attempted to revoke their dues checkoff authorizations, all sums improperly deducted from their wages in payment of union dues since February 25, 1965, together with interest thereon at the rate of 6 percent per annum.

WE WILL NOT continue to deduct union membership dues under the foregoing circumstances, and will not in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

PENN CORK & CLOSURES, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Fourth Floor, 16 Court Street, Brooklyn, New York, Telephone No. 596–5386.