Atlanta Printing Specialties and Paper Products Union Local 527, AFL-CIO (The Mead Corporation) *and* Jerry Fred Fennel. Cases 10-CB-2312 and 10-CB-2323

December 4, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On June 21, 1974, Administrative Law Judge Benjamin K. Blackburn issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as expanded herein, and to adopt his recommended Order.

The pertinent facts, as established by the stipulation of the parties and the findings of the Administrative Law Judge, are as follows: The parties' collective-bargaining agreement, which was scheduled to expire on November 1, 1973, allowed each employee to execute a form authorizing payroll checkoff of his union membership dues. Each form essentially embodied the requirements of Section 302(c)(4) that the authorization not be irrevocable for a period of more than 1 year, or beyond the termination date of the "applicable collective-bargaining agreement," whichever occurred sooner; and each form guaranteed a 15-day escape period immediately preceding the anniversary date of the authorization's execution, and a 15-day escape period immediately preceding the termination date of the "applicable collective-bargaining agreement." On October 13, 1973, a new collective-bargaining agreement was consummated, effective from October 15, 1973, to February 15, 1975. Between October 17 and November 1, 1973, a number of employees gave notice of revocation of their checkoff authorizations. Respondent caused the Employer to dishonor many of these notices as untimely.[1] It contended, as it now contends in this proceeding, that the "applicable collective-bargaining agreement" was the new one rather than the old one, and the 15-day escape period immediately preceding the termination date of the applicable collective-bargaining agreement was therefore from January 31, 1975, to February 15, 1975, rather than from October 17, 1973, to November 1, 1973. It argues that hence its actions were proper under the statute, and excepts to the Administrative Law Judge's finding that it violated Section 8(b)(1)(A) and (2) of the Act.

We disagree with the Respondent's contention, and affirm the finding of the Administrative Law Judge. As we read the Act, Section 302(c)(4) guarantees an employee two distinct rights when he executes a checkoff authorization under a collective-bargaining agreement: (1) a chance at least once a year to revoke his authorization, and (2) a chance upon the termination of the collective-bargaining agreement to revoke his authorization. The Respondent's interpretation of the statutory phrase "applicable collective-bargaining agreement," however, would enable it to negate the second right forever by the simple strategy of always negotiating a new agreement prior to the contractually created escape period, which here began 15 days before the termination date. In our view, the most reasonable identification of the "applicable" contract is the one that had not yet expired when the new agreement was executed and prematurely put into effect.

We do not believe that Congress, in enacting Section 302(c)(4), intended that the second of the two district employee rights guaranteed thereby could be negated by the device of such a premature contract renewal. If we were to sanction the effectiveness of such a premature contract renewal, we would permit the parties to entirely eliminate the statutorily guaranteed escape period.[2]

It is true, as the Respondent contends, that the parties are free to change the termination date or other pertinent provisions of their agreement. But this does

[1] The Respondent caused the Employer to honor other notices which were timely filed within the 15-day escape period immediately preceding the anniversary dates of certain employees' execution of their checkoff authorizations

[2] The present case is distinguishable from *American Smelting and Refining Company (Mission Unit)*, 200 NLRB 1004 (1972), precisely because of this The checkoff authorization forms involved in *American Smelting* stated, "This authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective-bargaining agreement whichever occurs sooner," and added, "I hereby voluntarily authorize you to continue the above authorization in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date " In that case, after the old agreement expired and a new one was executed, a number of employees filed revocation notices within an annual 15-day escape period immediately following the anniversary dates of their authorizations' executions The union, however, caused the employer to dishonor such notices as untimely, contending that according to the above-quoted language in the authorization forms, the annual escape period had shifted to the 15 days immediately following the anniversary date of the old agreement's termination The Board found no violation, concluding first that the union's action was taken in good faith and involved a reasonable interpretation of the relevant language in the collective-bargaining agreement and the authorization forms The Board then concluded that, as so interpreted, the provisions of the agreement did not infringe upon the exercise of employees' Sec 7 rights Unlike in the instant case, in *American Smelting*, the union preserved both the right at least once a year to revoke a checkoff authorization (even though it shifted the annual date on which revocation could be made) and the right upon the termination of the old agreement to revoke an authorization—whereas in the present case, the Union negated the latter statutory right entirely

not mean that they are at liberty thereby to extinguish statutory rights or to escape the legislative mandate of Section 302(c)(4) of the Act.

In changing termination dates, therefore, parties must preserve the statutory right of the employees to revoke their checkoff authorizations during the previously established escape period occurring before the originally intended expiration date of the old contract. For the above reasons and those advanced by the Administrative Law Judge, we conclude that the Union violated Section 8(b)(1)(A) of the Act by causing the Employer to dishonor the employees' revocation notices here in question, thus restraining and coercing the employees in the exercise of their statutory right to revoke their checkoff authorizations.[3] We further conclude that the Union violated Section 8(b)(2) of the Act by causing the Employer to discriminate against the employees who gave notice of revocation of their checkoff authorizations, thus encouraging membership in the Union.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Atlanta Printing Specialties and Paper Products Union Local 527, AFL–CIO, Atlanta, Georgia, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

[3] See *John I Paulding, Inc*, 130 NLRB 1035, 1043 (1961)

[4] It is well settled that where an employee has validly revoked his checkoff authorization, a union's causing an employer to continue deducting dues violates Sec 8(b)(2) *Industrial Towel and Uniform Services, a Division of Cavalier Industries, Inc*, 195 NLRB 1121 (1972), enforcement denied on other grounds 473 F 2d 1258 (C A 6, 1973) The discrimination in the instant case lay in the fact that the Employer deducted unauthorized sums from the paychecks of employees who had properly given notice of revocation of their checkoff authorizations. The encouragement of union membership lay in the fact that employees, seeing the futility of trying to revoke their checkoff authorizations, henceforth would be discouraged from trying to revoke their union membership absent a valid union-security clause We note that Georgia, where Respondent's plant is located, has a right-to-work law

DECISION

STATEMENT OF THE CASE

BENJAMIN K. BLACKBURN, Administrative Law Judge: The charge in Case 10–CB–2312 was filed on November 9, 1973. The charge in Case 10–CB–2323 was filed on January 9, 1974, and amended on February 7, February 21, and April 4, 1974. An Order Consolidating Cases and Consolidated Complaint were issued on February 21, 1974. An Amendment to Complaint was issued on April 24, 1974. Respondent filed a Motion to Dismiss on March 5, 1974. Administrative Law Judge Arthur Leff denied Respondent's motion on April 8, 1974. On April 22, April 24, and May 2, 1974, respectively, Fennell, counsel for Respondent, and counsel for the General Counsel executed a stipulation that:

> The charge in Case No. 10-CB-2312, the charge and the first, second, third and fourth[1] amended charges, in Case No. 10–CB–2323, the Consolidated Complaint and Notice of Hearing, Respondent's Motion to Dismiss the Consolidated Complaint, General Counsel's Response to the Motion to Dismiss, the Order dated April 8, 1974, by Administrative Law Judge Arthur Leff on said Motion, Respondent's Answer to the Consolidated Complaint, the Amendment to the Consolidated Complaint issued on April 24, 1974, and this Stipulation and its attached exhibits constitute the entire record in this case, and the introduction of any further or other evidence before an Administrative Law Judge is expressly waived . . . .

The stipulation also provides that:

> All parties waive hearing and agree that this matter shall be submitted to the Chief Administrative Law Judge of the Board, upon a motion by Counsel for the General Counsel, for a decision by a duly designated Administrative Law Judge, upon the record described herein, provided that the parties shall have 21 days from the date of the order granting such motion, or such further period as may be allowed for good cause shown to file briefs and proposed findings of fact and conclusions of law with said Administrative Law Judge.

Counsel for the General Counsel so moved on May 3, 1974. I was designated by the Chief Administrative Law Judge on May 8, 1974.

Upon the record formulated in this manner and after due consideration of briefs, I make the following:

FINDINGS OF FACT

I JURISDICTION

The Mead Corporation, herein called the Employer, is, and has been at all times material herein, an Ohio corporation, with an office and place of business located at Atlanta, Georgia, where it is engaged in the manufacture and sale of boxes and cartons. The Employer, during the past calendar year, which period is representative of all times material herein, sold and shipped finished products valued in excess of $50,000 directly to customers located outside the State of Georgia.

II THE UNFAIR LABOR PRACTICES

A. *Facts*

Respondent and the Employer were parties to a collective-bargaining agreement, effective July 20, 1970, to expire November 1, 1973, which provided in article II, *inter alia,* for the payroll deduction and remittance to Respondent of Respondent's membership dues upon the execution of an authorization therefor to the Employer by an employee. (The

[1] There is no fourth amended charge in the documents before me

language of said article has remained substantially unchanged throughout successive agreements between Respondent and the Employer since 1963.) The authorization for dues deduction involved herein provides:

> This authorization shall be irrevocable for a period of one year from the date of its execution or for the duration of the applicable collective bargaining agreement, whichever occurs sooner.

The authorization provides for an annual escape period during the 15 days preceding the anniversary date of the authorization, and for an escape period during the last 15 days of the applicable collective-bargaining agreement, during which notice of revocation can be given.

In July of 1973, Respondent and the Employer began negotiations which, on October 13, 1973, resulted in agreement upon a new collective-bargaining agreement, which was ratified on October 14, 1973, and by its terms became effective upon October 15, 1973, to expire February 15, 1975.

The 1967–70 agreement between Respondent and The Mead Corporation, by its terms, was effective from November 1, 1967, to expire November 1, 1970.

The following employees, prior to October 15, 1973, authorized the Employer to deduct Respondent's membership dues from their wages each month, and to remit said amounts so deducted to Respondent:

Virgill C. Allen	James F. Hogan
John F. Anderson	Claudia Houston
Noel T. Bryant	Calvin Hughes
Charles E. Campbell	Julius Jackson
Lewis Carr	Gary Jones
Ken Coryell	James N. Kendrick
Donald E. Crow	Donald A. King
Patsey Devorce	Dale Marlow
Barney Dowdell	Gwendolyn Nunnally
James E. Durmire	Alonzo Paulhill
Nina Everett	Thomas L. Puzder
Jerry Fred Fennell	Andrew J. Sellers
Wilburn Garrett	Howard Slatan
Wilma Garrett	Lucille Smith
W. C. Gaylor	Douglas F. Spinks
W. A. Griffey	James Spivey
Gordon E. Gurley	Ella M. Thomas
Lawrence Williams	

Between October 17, 1973, and November 1, 1973, a number of employees gave notice to the Respondent and to the Employer, in proper form, to revoke their dues deduction authorizations.

Some of such revocation notices were given within the annual escape period of the individual authorization and were therefore timely on that basis. Respondent caused the employer to honor these revocation notices.

Others of such revocation notices, including those given by the employees listed above, were not given within the annual escape period of the individual authorization, but were given within the 15 days preceding the expiration date specified in the old agreement. Respondent caused the Employer not to honor these revocation notices given by the employees listed above, so that these employees continued on dues checkoff notwithstanding their attempted revocation.

The stipulation contains the following paragraph relating to Respondent's contentions:

> Respondent contends that the new agreement . . . is the "applicable collective bargaining agreement," that the revocation notices of the employees listed [above] were not given during the fifteen day annual escape period nor during the fifteen days previous to the expiration of the "applicable collective bargaining agreement" and that such notices were not timely under the dues deduction agreement (authorization) in effect between each member and Respondent.

The stipulation contains the following further agreement between the parties with respect to those paragraphs of the complaint which allege that Respondent's purpose in causing the Employer to refuse to honor the revocations of the employees named above was "to encourage membership in Respondent" and that Respondent's acts constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended:

> With reference to paragraphs 10 and 11 of the Consolidated Complaint and Respondent's Answer thereto, it is agreed that the violation alleged therein is predicted upon the contention that the said revocations by the employees were timely, and that the violation of Section 8(a)(3) of the Act as encompassed therein arose solely as a consequence of Respondent's causing The Mead Corporation to refuse to honor said revocations.

B. *Analysis and Conclusions*

In his Response to Respondent's Motion to Dismiss and in his brief to me counsel for the General Counsel relied on *Felter* v. *Southern Pacific Company,* 359 U.S. 326, and *International Union, United Automobile, Aircraft, Agricultural Implement Workers of America, AFL–CIO, et al. (John I. Paulding, Inc.),* 130 NLRB 1035 (1961). In denying Respondent's motion, Administrative Law Judge Leff said:

> Assuming as I must for purposes of this motion the truth of the allegations of the consolidated complaint, and in light of the decisions cited by the General Counsel in his Response, I find no merit in Respondent's motion.

The only significant difference between *Paulding, supra,* and this case is that there the employees involved had taken action after the expiration of one contract and before execution of another, while here they took action during the escape period provided at the end of one contract at a time when another had superseded it. The Board had occasion to characterize its holding in the case relied on by the General Counsel in the third of a series of *Paulding* cases, 142 NLRB 296 at 299–300:

> In the first of these cases, *International Union, United Automobile, Aircraft, Agricultural Implement Workers of America, AFL–CIO (John I. Paulding, Inc.),* 130 NLRB 1035, Respondents attempted to cause the discharge of some 33 employees who had submitted resignations from Respondents on or after the expiration of the first contract and prior to the execution of the second contract on January 11, 1960.
>
> The Board found that, under the Act, these employees had a right to withdraw their membership from Re-

spondents after the first contract expired and at any time there was no contract in existence. The Board concluded that these employees had, for purposes of the Act, effectively terminated their membership prior to the date of the second contract, and were not, therefore, on that date members who were subject to the maintenance-of-membership clause in the second contract, and accordingly, Respondents' attempts to cause their discharge for nonpayment of dues under that clause were unlawful.

Thus, the precise question posed in this case is whether Respondent can abrogate employees' statutory right to cancel their checkoff authorizations during an escape period provided at the end of the term of a collective-bargaining agreement by executing a second collective-bargaining agreement which takes effect earlier than the first day of the escape period.

In the first *Paulding* case the Board adopted the Intermediate Report of Trial Examiner Vicent M. Rotolo (except for one aspect of his recommended Order and notice not relevant here), including the statement that:

> No restrictions or limitations imposed by either the Company or the Union unilaterally or by agreement with each other will be permitted to prevent the free exercise of the employee's statutory right to revoke his dues checkoff authorization at the termination of the contract.

Respondent contends the principle enunciated in the *Paulding* case is not controlling because of what it characterizes as the Board's "continuity of union security" doctrine. It cites as dispositive *American Smelting & Refining Company (Mission Unit),* 200 NLRB 1004. That case involved the interpretation of a checkoff authorization form which read in part:

> This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.

In sustaining Administrative Law Judge Jerrold H. Shapiro's conclusion that the Act had not been violated by the interpretation agreed on by company and union, the Board said:

> Our dismissal of the complaint herein does not rest solely on the finding that "Respondents acted reasonably and in good faith in construing the authorizations and the collective bargaining agreement . . . ." but also on our conclusion that, as so interpreted, the provisions of Respondents' agreement respecting the checkoff of union dues did not infringe upon employees' exercise of Section 7 rights.

Respondent contends *American Smelting* stands for these three propositions:

> (1) [T]hat the parties to a collective bargaining agreement may provide for reasonable fifteen-day escape periods which are enforceable as limitations upon the right to revoke a check-off authorization, (2) that the check-off authorization is an agreement by the employee which may limit his right to revoke a check-off authorization, and (3) that a construction of dues check-off authorization which deprives an employee of a supposed opportunity to revoke does not necessarily violate his Section 7 rights.

Assuming, without finding, that the Board intended its decision in *American Smelting* to have this sweeping effect, it does not follow that it is controlling here. The question posed in this case, i.e., what does the word "applicable" mean in the statutory guarantee that a checkoff authorization "shall not be irrevocable . . . beyond the termination date of the applicable collective agreement," was not considered in *American Smelting.* While neither *Paulding* nor *American Smelting* is on all fours with this case, *American Smelting* is not, as Respondent contends, "more nearly like the present case than any other" *Paulding* is. The third *Paulding* case, 142 NLRB 296 (1963), *Hershey Chocolate Corporation,* 140 NLRB 249, and *National Lead Company, Titanium Division,* 106 NLRB 434 (1953), cited by Respondent for its doctrine of "continuity of union security," are even less apposite than *American Smelting.* As Respondent points out, "they dealt with union shop and maintenance of membership clauses, rather than check-off clauses." Finally, the portions of the legislative history of the Taft-Hartley Act which Respondent relies on do not require a different conclusion. They provide no insight into what Congress meant by the use of the word "applicable" in the situation presented here.

The employees listed above had a statutory right to revoke their checkoff authorizations between October 16 and November 1, 1973, because, by its terms, a collective-bargaining agreement was due to expire on the latter date. The Board, in *Paulding,* has held that nothing will be permitted to prevent the free exercise of that right. The fact that Respondent caused the Employer to dishonor the revocations executed by the employees listed above is sufficient to bring this case within the ambit of Section 8(a)(3) even though Respondent has made no request and conditions of employment which would be discriminatory within the meaning of that section of the Act. I find, therefore, that Respondent has violated Section 8(b)(1)(A) and (2) of the Act by causing the Employer not to honor revocations of dues checkoff authorizations furnished to it by its employees during the period from October 16 to November 1, 1973

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

CONCLUSIONS OF LAW

1. The Employer is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By causing the Employer not to honor revocations of dues checkoff authorizations furnished to it by its employees during the period from October 16 to November 1, 1973, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and

pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[2]

Atlanta Printing Specialties and Paper Products Union Local 527, AFL–CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing The Mead Corporation not to honor revocations of dues checkoff authorizations furnished to it by the employees listed in Appendix A during the period from October 16 to November 1, 1973.

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

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

(a) Notify The Mead Corporation, in writing, that it withdraws its request that said corporation not honor the revocations of dues checkoff authorizations furnished to it by the employees listed in Appendix A during the period from October 16 to November 1, 1973, and send a copy of said letter to each of the employees listed in said Appendix.

(b) Reimburse each of the employees listed in Appendix A for the dues withheld from his wages by The Mead Corporation since November 1, 1973, plus interest, computing the sum due each employee in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(c) Post at its offices and meeting halls copies of the attached notice marked "Appendix B."[3] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Mail signed copies of the attached notice marked "Appendix B" to the Regional Director for Region 10 for posting at facilities of The Mead Corporation, provided said corporation chooses to post said notice.

(e) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith

[2] In the event no exceptions are filed as provided by Sec 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes

[3] In the event that the Board's 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 A

Virgil C. Allen	James F. Hogan
John F. Anderson	Claudia Houston
Noel T. Bryant	Calvin Hughes
Charles F. Campbell	Julius Jackson
Lewis Carr	Gary Jones
Ken Coryell	James N. Kendrick
Donald E. Crow	Donald A. King
Patsey Devorce	Dale Marlow
Barney Dowdell	Gwendolyn Nunnally
James E. Durmire	Alonzo Paulhill
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Wilburn Garrett	Howard Slatan
Wilma Garrett	Lucille Smith
W. C. Gaylor	Douglas F. Spinks
W. A. Griffey	James Spivey
Gordon E. Gurley	Ella M. Thomas
Lawrence Williams	

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board having found, after a trial, that we violated Federal law by causing The Mead Corporation not to honor revocations of dues checkoff authorizations furnished to it by some of its employees during the period from October 16 to November 1, 1973, we hereby notify you that:

The National Labor Relations Act gives all employees these rights:

To engage in self-organization

To form, join, or help unions

To bargain collectively through a representative of their own choosing

To act together for collective bargaining or other aid or protection

To refrain from any or all of these things.

WE WILL NOT cause The Mead Corporation not to honor revocations of dues checkoff authorizations furnished to it by its employees during periods when its employees have a legal right to revoke their authorizations.

WE WILL NOT, in any like or related manner, restrain or coerce employees in the exercise of the above rights.

WE WILL notify The Mead Corporation, in writing, that we withdraw our request it not honor the revocations of dues checkoff authorizations furnished to it by:

Virgill C. Allen	James F. Hogan
John F. Anderson	Claudia Houston
Noel T. Bryant	Calvin Hughes

Charles E. Campbell
Lewis Carr
Ken Coryell
Donald E. Crow
Patsey Devorce
Barney Dowdell
James E. Durmire
Nina Everett
Jerry Fred Fennell
Wilburn Garrett
Wilma Garrett
W. C. Gaylor
Julius Jackson
Gary Jones
James N. Kendrick
Donald A. King
Dale Marlow
Gwendolyn Nunnally
Alonzo Paulhill
Thomas L. Puzder
Andrew J. Sellers
Howard Slatan
Lucille Smith
Douglas F. Spinks
W. A. Griffey
Gordon E. Gurley
Lawrence Williams
James Spivey
Ella M. Thomas

during the period from October 16 to November 1, 1973, and send a copy of said letter to each of these employees.

WE WILL reimburse each of these employees for the dues withheld from his wages by The Mead Corporation since November 1, 1973, plus interest.

ATLANTA PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 527, AFL–CIO