

**Affiliated Food Stores, Inc. and Mark Hoyum
General Drivers, Warehousemen and Helpers,
Local Union 745, affiliated with International
Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America, AFL-CIO¹
and Mark Hoyum.** Cases 16-CA-14274 and 16-
CB-3459

May 24, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On May 25, 1990, Administrative Law Judge William N. Cates issued the attached decision. Respondent Union and Respondent Employer both filed exceptions and supporting briefs, and the General Counsel filed an answering brief in support of the administrative law judge's decision.

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

The 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 as modified and to adopt the recommended Order as modified.

The judge found that Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by refusing to process employee Mark Hoyum's dues-deduction revocation and by instructing, attempting to cause, and causing the Employer to continue dues deductions for Hoyum after he effectively resigned from union membership. The judge further found that Respondent Employer violated Section 8(a)(1), (2), and (3) of the Act by refusing to honor Hoyum's request to revoke his dues-checkoff authorization and assignment after he effectively resigned from union membership. We agree with the judge's findings of the violations cited, but do so for the following reasons.²

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,³ the Board acknowledged judicial criticism of the *Eagle Signal*⁴ analysis and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization

even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.⁵ In order to give full effect to these fundamental labor policies, the Board stated that it would:

construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. [Id. at 328–329.]⁶

Applying the analysis of *Lockheed* to the facts in this case, we find the Respondents have failed to show that the dues-checkoff authorization that employee Hoyum signed obligated him to pay dues after he effectively resigned union membership. As in *Lockheed*, all that Hoyum clearly agreed to do was to allow certain sums to be deducted from his wages and remitted to Respondent Union for payment of “initiation fees, monthly fees, and uniform assessments.” He did not clearly agree to have deductions made after he had submitted his resignation from union membership. We thus find that Hoyum did not clearly and unmistakably waive his right to refrain from assisting a union after resignation from membership. The authorization could therefore not be enforced against him after he ceased being a union member. We therefore find that Respondent Employer's refusal to discontinue payroll deductions of union dues for Hoyum was unlawful assistance to a labor organization and restrained and coerced Hoyum in the exercise of his Section 7 rights. Accordingly, we find that Respondent Employer violated Section 8(a)(1), (2), and (3) of the Act. We further conclude that Respondent Union's continuing to require Hoyum to pay dues following his resignation from

¹On November 1, 1987, the Teamsters International Union was readmitted to the AFL-CIO. Accordingly, the caption has been amended to reflect that change.

²The judge also found that Respondent Union violated Sec. 8(b)(1)(A) of the Act by refusing to process, in a timely manner, the resignation of employee Hoyum. As to this matter, we agree with the judge's finding and his rationale.

³302 NLRB 322 (1991).

⁴See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

⁵*Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

⁶In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. In the absence of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.

union membership and its demand that Respondent Employer continue to check off his membership dues restrained and coerced Hoyum in the exercise of his Section 7 rights. We thus find that Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 3.

“3. By refusing to process Mark Hoyum’s resignation from the Union in a timely matter and by requiring him to continue to pay dues after he resigned membership in the Union, where the terms of the voluntarily executed checkoff authorization did not clearly and explicitly impose any postresignation dues obligation on him, Respondent Union has restrained and coerced him in the exercise of his Section 7 rights and violated Section 8(b)(1)(A) of the Act.”

2. Insert the following as Conclusion of Law 4 and renumber the remaining paragraphs.

“4. By causing the Employer, by virtue of a dues-checkoff authorization that does not clearly and explicitly impose any postresignation dues obligation on the employees, to deduct union membership dues from Hoyum’s wages after he had resigned union membership, Respondent Union has violated Section 8(b)(2) of the Act.”

3. Substitute the following for new Conclusion of Law 5.

“5. By refusing to discontinue dues deductions from the wages of Mark Hoyum after he ceased being a union member, Respondent Employer has unlawfully assisted Respondent Union and has restrained and coerced Hoyum in the exercise of his Section 7 rights, thereby violating Section 8(a)(1), (2), and (3) of the Act.”

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that

A. Respondent General Drivers, Warehousemen and Helpers, Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Keller, Texas, its officers, agents, and representatives, shall take the action set forth in the Order, as modified.

1. Substitute the following for paragraph A(1)(b).

“(b) Requiring any employee to continue to pay dues after the employee has resigned membership in the Union, where the terms of the voluntarily executed checkoff authorization did not clearly and explicitly impose any postresignation dues obligation on the employee and where the employee no longer owes union dues.”

2. Insert the following for paragraph A(1)(c) and reletter the remaining paragraph.

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

3. Substitute the attached notice to members for that of the administrative law judge.

B. Respondent Affiliated Food Stores, Keller, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

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

“(a) Deducting, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligation on the employees, union membership dues from the wages of any employee who has resigned union membership.”

2. Substitute the attached notice to employees for that of the administrative law judge.

APPENDIX A

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 require any employee to continue to pay dues after the employee has resigned membership in the Union, where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employee and where the employee no longer owes union dues.

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

WE WILL NOT refuse to process, in a timely manner, resignations from union membership.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole employee Mark Hoyum jointly and severally with Affiliated Food Stores, Inc. for any dues deductions from his wages for the period fol-

lowing his resignation from union membership, with interest.

GENERAL DRIVERS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION 745,
AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, AFL-CIO

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 has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT deduct, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligation on the employees, union membership dues from the wages of employees who have resigned their union membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, jointly and severally with General Drivers, Warehousemen and Helpers, Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, employee Mark Hoyum for any dues deductions from his wages for the period following his resignation from union membership, with interest.

AFFILIATED FOOD STORES, INC.

Timothy Watson, Esq., for the General Counsel.
Richard R. Swarb, of Keller, Texas, for the Company.
Yona Rozen, Esq. (Hicks, Gillespie, James, Rozen & Preston P.C.), of Dallas, Texas, for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case was heard before me on February 5, 1990, at Fort Worth, Texas. The trial was held pursuant to an order consolidating cases, amended consolidated complaint and notice of hearing (complaint) issued by the Regional Director for Region 16 of the National Labor Relations Board (Board) on January 11, 1990. The complaint is based on charges filed by Mark Hoyum, an individual (Hoyum), against Affiliated Food Stores, Inc. (Company) and against General Drivers, Warehousemen and Helpers, Local Union 745, affiliated with

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union). The charge in Case 16-CA-14274 was filed on October 17, and amended on December 4, 1989. The charge in Case 16-CB-3459 was filed on October 17, and amended on December 4, 1989. The complaint alleges the Union has violated Section 8(b)(1)(A) and (2) of the Act by refusing and continuing to refuse since on or about September 12, 1989, to process Hoyum's resignation and dues deduction revocation and by instructing, attempting to cause, and causing, the Company to continue the deduction of Hoyum's dues. It is further alleged in the complaint that the Company violated Section 8(a)(1), (2), and (3) of the Act by refusing since on or about October 11, 1989, to honor Hoyum's request to revoke his dues-checkoff authorization and assignment.

The Company and Union admitted the commerce and jurisdictional allegations of the complaint as well as the labor organization status of the Union. However, they denied having violated the Act in any manner alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering briefs filed by counsel for the General Counsel, the Company, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company is now, and has been at all times material, a Texas corporation with an office and principal place of business in Keller, Texas, where it is engaged in the wholesale distribution of food products. During the calendar year preceding issuance of the complaint herein, a representative period, the Company, in the course and conduct of its operations, purchased and received goods, materials, equipment and supplies valued in excess of \$50,000 at its Keller, Texas facility directly from points outside the State of Texas. The Company is, and has been at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

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

III. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The operative facts are not in dispute. The Company and Union have a longstanding relationship and have been parties to successive collective-bargaining agreements, the most recent of which is effective from July 2, 1987 through July 1, 1990. Article VIII of the current collective-bargaining agreement provides for checkoff whereby the Company deducts union dues from the earnings of any employee who authorizes such deductions by signing a union-provided checkoff authorization and assignment card. Dues are deducted in accordance with the provisions outlined on the union-provided authorization card.

Pertinent portions of article VIII "Checkoff" are as follows:

ARTICLE VIII

CHECK-OFF

(1) The COMPANY will deduct UNION dues (consisting of initiation fees, monthly fees and uniform assessments) each month from the earnings of any employee who authorizes such deductions by signing the authorization card currently in use by the UNION (a copy of which has been furnished to the COMPANY), and such deductions shall be made in accordance with provisions of said authorization form.

(2) Prior to the first (1st) day of each month, the UNION shall furnish the COMPANY a list of employees from whose earnings deductions are to be made for such dues and the amounts to be deducted. The COMPANY will deduct said amount from the first paycheck of the employee in each month, and shall promptly remit the total of said deductions to the Local UNION's fiscal officer, together with a list of the names of the employees for whom deductions have been made and the respective amounts of such deductions.

(3) The UNION agrees that it will indemnify and save the COMPANY harmless from any and all liability, claim, responsibility, damage, or suit which may arise out of any action taken by the Company in accordance with the terms of this Article or in reliance upon the authorization mentioned herein.

. . . .

(6) The COMPANY will recognize authorization for an annual or weekly DRIVE deduction from wages to be transmitted to Local 745 DRIVE. No such authorization shall be recognized if in violation of State or Federal Law.

The checkoff authorization and assignment cards utilized at material times herein are identical to the one voluntarily signed by Hoyum on August 17, 1984. The checkoff authorization and assignment card Hoyum signed is as follows:

CHECK-OFF AUTHORIZATION
AND ASSIGNMENT

I, the undersigned member of Local 745 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America herewith authorize my employer to deduct from my wages each and every month my union dues consisting of initiation fees, monthly fees, and uniform assessments owing to such Local Union as a result of membership, therein, and direct that such amounts so deducted be sent to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization and assignment shall be irrevocable for the term of applicable contract between the Union and the Company, or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, unless I give written notice to the Company and the Union at least 60 days and not more than 75 days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Date 8/17/84

Signature /s/ Mark Hoyum
Sign Full Name

Hoyum sent an undated certified letter to the Union which was received on September 11, 1989. Hoyum's handwritten letter reads as follows:

To Whom it May Concern

I am withdrawing from Teamsters Local #745 on Date 9/ /89. Which is my right in the Affiliated Foods, Teamsters contract July 1, 1987-July 1, 1990 in Article Three: Paragraph One.

Also at this time I am also withdrawing from all donations to D.R.I.V.E. (Teamsters charity).

c/c Teamsters local #745
c/c affiliated foods
c/c Labor Relations Board.

Hoyum sent certified copies of his letter to the Company and to the Board's Regional (16) Office.

Union Assistant Business Representative Michael Kline (Kline) acknowledged receipt of Hoyum's request in a letter to Hoyum dated September 12, 1989. Kline's letter to Hoyum is as follows:

Mr. Mark Hoyum
3713 East Ridge
Haltom, Texas 76117

Dear Sir and Brother:

Please be advised Teamsters Local Union 745 is in receipt of your request to 'Withdraw' your membership from this Local Union.

Please be advised your withdrawal is irrevocable through the terms of the Check-Off Authorization and Assignment. We will expect the Company to continue the Check-Off provisions per Article 8 of the current working Agreement.

Also, please be advised that your application for withdrawal from D.R.I.V.E. should be sent to the International Union in Washington, D.C.

Fraternally yours,
TEAMSTERS, LOCAL UNION 745
/s/ Michael Kline
Michael Kline
Assistant Business
Representative

The Company did not respond to Hoyum's letter. Company payroll clerk Carla Harter (Harter) testified that after she received the letter, she immediately canceled payroll deduction of union dues for Hoyum. Harter said that after the next pay period (around October 4, 1989) from which union dues were deducted, she received a telephone call from Union Assistant Business Representative Kline about the fact dues were not deducted for Hoyum. Kline told Harter the Company should not have stopped deducting dues from Hoyum's wages. Harter said she reviewed Hoyum's dues deduction status with her superiors and thereafter telephoned Kline to tell him dues deductions for Hoyum should not have been stopped and would be reinstated.

The Company deducted union dues from Hoyum's next pay check which was on October 11, 1989.

On receipt of his October 11, 1989 pay check from which union dues had been deducted, Hoyum telephoned Company payroll clerk Harter for an explanation. Harter told Hoyum it was her fault that she had mistakenly stopped deducting dues from his pay. Harter explained the situation to Hoyum, apologized for her mistake, and told him dues deductions had been reinstated for him. The Company thereafter has continued to deduct dues from Hoyum's pay and transmit same to the Union which has continued to receive the dues.

On November 16, 1989, Assistant Business Representative Kline sent Hoyum the following letter:

Mr. Mark Hoyum
3713 Eastridge
Haltom, Texas 76117

Dear Mr. Hoyum:

In further response to your letter notifying the Union of your withdrawal from Teamsters Local 745 which was received by Local 745 on September 11, 1989, I would offer you the following information. Although the Article that you quote (Article III) is not currently in effect, we take your letter to mean that you wish to withdraw from your membership in Local 745. Therefore, we will grant your request that you no longer be a member of Local 745.

However, the issue of Dues Deduction Authorization is separate from membership in Local 745. Since your request was not timely as to the terms of your Dues Deduction and Authorization, it is our position that you are still bound by your Dues Deduction and Authorization.

I hope that this clarifies the Union's position in this matter.

Very truly yours,
/s/ Michael Kline
Michael Kline
Assistant Business
Representative
TEAMSTERS LOCAL
UNION 745

Assistant Business Representative Kline testified there was no requirement that an employee authorize payroll deductions in order to pay union dues. Kline said employees could pay their dues personally at the union hall, or they could do so through the postal service utilizing checks or money orders. Kline acknowledged that all of the approximately 550 dues paying employees at the Company paid their union dues pursuant to the checkoff procedure. Kline explained the Union relied on the period of irrevocability for dues to plan and budget its operations.

The Union continues to receive dues deducted by the Company on behalf of Hoyum.

B. Discussion, Analysis, and Conclusions

The central overriding question to be decided herein is whether Hoyum's checkoff authorization and assignment was terminated as a result of his resignation from the Union.

The positions taken by the parties are briefly highlighted at this point to facilitate an understanding of the analysis hereinafter set forth.

Counsel for the General Counsel asserts certain rights accorded employees in Section 7 of the Act are well settled. He asserts that one of the most important of those settled rights is the right to resign union membership unimpeded. Counsel for the General Counsel points out that the Board and Courts have concluded that any restriction on the right to resign membership in a union is not only inconsistent with a policy of voluntary unionism implicit in Section 8(a)(3) of the Act but also violates Section 8(b)(1)(A) of the Act. With respect to the instant case, counsel for the General Counsel asserts the Union's refusal to grant Hoyum's request for resignation from the Union until approximately 2 months after he made his request was unlawful. Counsel for the General Counsel further asserts the Union's refusal to recognize Hoyum's resignation from the Union as a revocation of his dues-checkoff authorization and assignment constituted an unlawful restriction on his Section 7 right to resign union membership. Counsel for the General Counsel urges that the Section 7 rights of employees, such as Hoyum, to resign their union membership necessarily encompasses the right to sever all ties to the union. In that regard, counsel for the General Counsel urges that logic dictates that an employee's Section 7 right to resign membership in a union would be meaningless if an employee, such as Hoyum, could be required to continue to lend financial support to the union from which he or she has resigned.¹ Counsel for the General Counsel urges that the Union's barrier of not allowing Hoyum to escape financial responsibilities to the Union unlawfully deterred him in the exercising of one of his most fundamental Section 7 rights—the right to resign union membership.

Counsel for the General Counsel argues an alternative theory namely that even if Hoyum's resignation from the Union did not revoke his checkoff authorization, his resignation reduced his dues obligation to zero. Accordingly, he argues zero is the amount to be deducted and remitted to the Union. Consequently, he argues the Union violated the Act by causing the Company to deduct and by continuing to accept any amount of dues from Hoyum's pay greater than zero.

Finally, counsel for the General Counsel asserts the checkoff authorization and assignment card executed by Hoyum by its express language makes dues payment a quid pro quo for union membership. Counsel for the General Counsel argues Board law is that a resignation will revoke a checkoff authorization and assignment even in the absence of a revocation request where the authorization itself makes payment of dues a quid pro quo for union membership.

The Union asserts Hoyum voluntarily joined the Union and when faced with the option of paying his dues directly or paying them through checkoff, he opted to enter into a contract with the Union and the Company for the manner in which he would pay his union commitments. The Union argues there is nothing about that voluntary arrangement between the parties for the convenient payment of dues that violates Section 7 of the Act inasmuch as it was a voluntary noncoercive act. In that regard, the Union argues Hoyum was free during the term of his checkoff authorization to quit the union and cease associating with it; however, having volun-

¹ Counsel for the General Counsel contends the instant case does not involve a union-security clause and as such he asserts he need not, and does not, take a position on the requirements of an employee resigning his or her union membership in that type situation.

tarily entered into a contract with the Union, he was not free to void the means he chose for payment of his dues except pursuant to the terms of the checkoff authorization and assignment. The Union further contends Hoyum could have sought a checkoff authorization providing for cessation of dues deductions at any time but instead chose to sign a checkoff authorization committing himself to at least one year's payments. The Union argues that under the circumstances, it is nonsensical to contend Hoyum is now unlawfully restricted by the voluntary act he made in selecting a means of paying his commitments to the Union. The Union asserts it has not in any manner restricted Hoyum's right to resign his membership in the Union. The Union notes that although Hoyum is no longer a member he is a party to a common law contract requiring him to pay union dues for a period of at least one year. The Union urges Hoyum's commitment is subject to termination by him but only pursuant to the terms set out in the checkoff authorization and assignment itself. The Union also argues that by knowingly and conscientiously entering into this dues-checkoff arrangement Hoyum gave up his right to cease paying dues on an unrestricted basis. In this regard, the Union argues Hoyum is estopped from asserting a violation of the Act in that he has waived his statutory right to complain by entering into the voluntary dues-checkoff authorization and assignment.

The Union argues the checkoff authorization is not in consideration of union membership but is merely an agreed upon means of payment selected by the Union, Company, and Hoyum. The Union asserts each benefits from this arrangement. The individual has his obligations to the union taken care of without any effort on his part, the Union is able to plan its operations based on funds available to it and the Company and Union benefit from having a system of dues collection that is not constantly disrupted.

Finally, the Union notes Hoyum executed his dues-checkoff authorization on August 17, 1984, and did not file his charges until October 1989. The Union points out that more than 6 months elapsed between his execution of the agreement and the filing of the charges. Accordingly, the Union urges that if a violation occurred, it occurred when the dues-checkoff authorization (which imposed the restrictions complained of herein) was executed. The Union argues Hoyum's charges are therefore time barred.

The Company takes the position it has not violated the Act simply by fulfilling certain of the terms and conditions of its collective-bargaining agreement with the Union specifically as it pertains to checkoff of union dues. The Company asserts Hoyum voluntarily executed the checkoff authorization and assignment agreement thereby agreeing to be bound by the revocation limitations set forth therein. Simply stated the Company urges the checkoff authorization is a contract entitled to full force and effect unless revoked in accordance with the provisions set forth therein. The Company contends that since Hoyum did not resign his membership within the time period set forth in the checkoff authorization and assignment agreement, he failed to effectively revoke his checkoff authorization. Finally, the Company asserts the checkoff authorization and assignment is separate and apart from, and not in consideration for, union membership.

It is useful at this point to review certain principles established by the Board and courts.

In *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985), the Supreme Court addressed the issue of "whether a union is precluded from fining employees who have attempted to resign when resignations are prohibited by the union's constitution." In deciding that issue, the Court held:

The Board has found union restrictions on the right to resign to be inconsistent with the policy of voluntary unionism implicit in 8(a)(3). See *International Assn. of Machinists, Inc., Local 1414 (Neufeld Porsche-Audi, Inc.)*, supra; *Machinists Local 1327 (Dalmo Victor II)*, 263 NLRB at 992 (Chairman Van de Water and Member Hunter concurring). We believe that the inconsistency between union restrictions on the right to resign and the policy of voluntary unionism supports the Board's conclusion that League Law 13 is invalid.

In the *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), case referred to by the Court in *Pattern Makers*, the Board adopted the concurring opinion of then Chairman Van de Water and then Member Hunter in *Dalmo Victor II*, 263 NLRB 984, enf. denied 725 F.2d 1212 (9th Cir. 1984), that any restriction imposed on a member's right to resign union membership or to otherwise refrain from Section 7 activities violated Section 8(b)(1)(A) of the Act.

In the case of *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635 at 637 (1984), the Board held:

It is established Board law that a dues-checkoff authorization, or wage assignment as it is called in this case, is a contract between an employee and his employer and that a resignation of union membership ordinarily does not revoke a checkoff authorization. However, a resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself.

In *Letter Carriers (Postal Service)*, 283 NLRB 644 (1987), the Board adopted an administrative law judge's conclusion that the payment of dues therein was a quid pro quo for union membership. In that decision, then Member Johansen noted "that the same result is reached if we construe the [dues deduction] authorization to continue but that, as the amount of dues owed is zero, zero is the amount to be deducted and remitted."

The above principles make one thing absolutely clear which is no restrictions, impediments, or delays may lawfully be placed on a member's right to resign from a union. Hence, the delay by the Union herein in honoring Hoyum's request to resign his union membership from September 11, 1989 until November 16, 1989, was excessive, not shown to be necessary and as such violated the Act. In that regard, I note the Union offered no valid explanation for the roughly 10 weeks it took to honor Hoyum's request to resign his union membership. Furthermore, the teachings of *Pattern Makers* and *Neufeld Porsche-Audi*, persuade me that the Section 7 rights of members to resign their union membership necessarily encompasses the right to sever all ties to a union. A member's right to resign union membership would be meaningless if he or she could thereafter be required to con-

tinue to lend financial support to a union from which he or she has resigned. To not allow an employee to escape the monetary burden placed upon him or her by dues checkoff after the employee has effectively resigned membership in a union would constitute a barrier that would impede, if not completely deter, such an employee from exercising one of his or her most fundamental Section 7 rights, namely the right to resign union membership. Stated differently, the monetary implications of continued dues deductions after membership resignation amounts to a frustration of the right to resign union membership. In the instant case, the Union did not allow Hoyum to escape monetary obligations to it even after it belatedly honored his request to resign his union membership. The Union's action in reality made Hoyum's resignation meaningless and unlawfully impeded and frustrated him in his effort to sever his relationship with the Union. Simply stated, the Union's restriction on Hoyum's revocation of dues checkoff was, and is, tantamount to a restriction on resignation and accordingly unlawful under the Supreme Court's teachings in *Pattern Makers* and I so find. In that same light, I also conclude and find the Company violated Section 8(a)(1), (2), and (3) of the Act by refusing to honor Hoyum's request to revoke his dues checkoff authorization and assignment after he had effectively resigned his union membership.

Alternatively, I conclude and find the checkoff authorization and assignment executed by Hoyum clearly demonstrates the moneys withheld and thereafter transmitted to the Company were, and are, being withheld (and transmitted) as a quid pro quo for membership in the Union. The pertinent language in the authorization and assignment signed by Hoyum—"I . . . authorize my employer to deduct from my wages . . . my union dues consisting of initiation fees, monthly fees, and uniform assessments owing such local union as a result of membership, therein," is virtually indistinguishable in character from *Eagle Signal*, supra, and *Food & Commercial Workers Local 425 (Hudson Foods)*, 282 NLRB 1413 (1987). Accordingly, I find Hoyum's authorization and assignment was revoked, by operation of law, when he effectively resigned his membership in the Union and that the Union by causing the Company to continue to checkoff dues for Hoyum restrained and coerced him in the exercise of his Section 7 rights in violation of Section 8(b)(1)(A) and (2) of the Act. I likewise find the Company violated Section 8(a)(1), (2), and (3) of the Act by failing and refusing to honor Hoyum's request to revoke his dues-checkoff authorization and assignment after he had effectively resigned his union membership.

Assuming arguendo that Hoyum's authorization and assignment continued in effect, I would conclude the amount of dues he owes is zero and in keeping with then Member Johansen's notation in *Letter Carriers (Postal Service)*, zero is the amount to be deducted and remitted to the Union.

The fact certain appellate courts have rejected the Board's rationale in these type cases, see, e.g., *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987), and *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987), does not compel a different result than that arrived at herein in that Board precedent is to be applied by administrative law judges unless or until the Supreme Court rules otherwise. See, e.g., *Iowa Beef Packers*, 144 NLRB 615 (1963), and *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984).

I reject the Union's contention the charges herein are barred by the 6-month limitations period outlined in Section 10(b) of the Act or that Hoyum is estopped from asserting violations of the Act against it as being patently without merit.

CONCLUSIONS OF LAW

1. Affiliated Food Stores, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. General Drivers, Warehousemen and Helpers, Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to process Mark Hoyum's resignation from the Union in a timely manner, by refusing to process his dues deduction revocation, and by instructing, attempting to cause, and causing the Company to continue dues deductions for Hoyum after he effectively resigned from union membership, the Union violated Section 8(b)(1)(A) and (2) of the Act.

4. By refusing to honor Mark Hoyum's request to revoke his dues-checkoff authorization and assignment after he effectively resigned from union membership, the Company violated Section 8(a)(1), (2), and (3) of the Act.

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

THE REMEDY

Having found that the Union and Company have engaged in, and are engaging in, unfair labor practices within the meaning of Sections 8(b)(1)(A) and (2) and 8(a)(1), (2), and (3) of the Act, I shall order the Union and Company to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Union and Company make Mark Hoyum whole for any monetary losses he may have suffered by reason of the Union's and Company's unlawful refusal to honor his revocation of dues-checkoff authorization and assignment after Hoyum had effectively resigned his union membership. The moneys owed are to be computed in a manner consistent with Board policy and with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

A. General Drivers, Warehousemen and Helpers, Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Amer-

² Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ica, AFL-CIO, Keller, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to timely honor valid resignations by employees from union membership.

(b) Refusing to honor the revocation of dues checkoff authorization and assignment by employees having effectively resigned their union membership.

(c) 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) Jointly and severally with Affiliated Food Stores, Inc. reimburse or refund to Mark Hoyum the dues unlawfully collected from him, with interest, for the period following his valid resignation from union membership and revocation of dues-checkoff authorization and assignment as set forth in the remedy section of this decision.

(b) Post at its Union office, copies of the attached notice marked "Appendix A."⁴ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Union's authorized representative, shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

⁴If 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."

B. Affiliated Food Stores, Inc., Keller, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to honor the revocation of dues checkoff authorization and assignment by employees having effectively resigned their union membership.

(b) In any like or related manner interfering with, 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) Jointly and severally with General Drivers, Warehousemen and Helpers, Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, reimburse or refund to Mark Hoyum the dues unlawfully collected from him, with interest, for the period following his valid resignation from union membership and revocation of dues-checkoff authorization and assignment as set forth in the remedy section of this decision.

(b) Post at its Keller, Texas, office, copies of the attached notice marked "Appendix B."⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Company has taken to comply.

⁵ See fn. 4, *supra*.