

**United Workers of America, Local 621 and Service Employees International Union Local 32BJ.**  
Case 29–CB–097003

April 29, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND SCHIFFER

On July 31, 2013, Administrative Law Judge Michael Rosas issued the attached decision. The General Counsel filed exceptions and the Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the judge’s rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The original complaint consolidated two charges filed by the Service Employees International Union Local 32BJ (the Charging Party), one against The Gretsches Condominium and AKAM Associates, as joint employers (the Employer), and the other against the United Workers of America, Local 621 (the Respondent or the Union). Shortly before the hearing, the Employer and the Charging Party settled their case and the portions pertaining to the allegations against the Employer were severed and withdrawn from the consolidated complaint. The only allegation now remaining before the Board is whether the Union violated Section 8(b)(1)(A) of the Act by accepting union dues deducted from employees’ paychecks after those employees executed checkoff authorization revocations. The critical question is whether those revocations were effective when executed following a deauthorization vote in a Board election, but before the Board certified the results of the election. The judge found this violation. We reverse.

I. FACTS

During the relevant period, the Respondent was the exclusive bargaining representative of a unit of the Employer’s employees. The parties’ most recent collective-bargaining agreement was effective from March 31, 2011, to March 31, 2014. It contained a union-security clause and a dues-deduction authorization provision.

A deauthorization election was conducted on September 26, 2012,<sup>1</sup> resulting in a unanimous vote (9–0) to withdraw the authority of the Union to require union membership as a condition of employment. The Certification of the Results of the Election was issued by the Region on October 11. However, on October 1, 10 days

prior to the certification, the nine unit employees sent individual letters to the Union and the Employer resigning from union membership and revoking their union dues-deduction authorizations. In spite of these submissions, the Employer continued to deduct and forward union dues, and the Union accepted these payments, through March 2013.<sup>2</sup>

The judge found that, as of October 11, the date of certification of the election results, the Union violated Section 8(b)(1)(A) by accepting union dues deducted from employees’ paychecks. Specifically, he treated the revocations received prior to the certification of the deauthorization election as having been held in abeyance until the Board certified the election on October 11. The judge concluded that the Board’s subsequent certification constituted a validation of the employees’ premature revocations, and those revocations should then have been given effect.

II. ANALYSIS

Contrary to the judge, we find that premature revocations of dues-checkoff authorizations do not become valid upon certification of deauthorization election results. Rather, we find that the unit employees’ revocations of their dues-checkoff authorizations were invalid because they were executed prior to the date that the certification of election results issued, and did not “ripen” upon the Board’s subsequent action.

While there is no precedent directly on point, both the Act and closely related precedent support this brightline approach. “[T]he Act generally reflects a congressional emphasis on Board certification as a critical step in creating or dissolving statutory obligations. Thus, Section 8(a)(3) does not provide for the rescission of the Union’s statutory authority to negotiate a union-security provision ‘unless following an election . . . the Board shall have certified that at least a majority of the employees’ desire rescission.’” *West Coast Cintas Corp.*, 291 NLRB 152, 154 (1988). Accordingly, the Board has long held that an affirmative vote to deauthorize suspends an agreed-upon union-security clause upon certification of results, not immediately as of the election date. See, e.g., *Mon-santo Chemical Co.*, 147 NLRB 49, 51 (1964); *Penn Cork & Closures, Inc.*, 156 NLRB 411, 414–415 (1965), *enfd.* 376 F.2d 52 (2d Cir. 1967), *cert. denied sub nom. Machinists District Lodge No. 15 v. NLRB*, 389 U.S. 843 (1967). Further, there is “ample precedent for the general rule that the certification of results of an affirmative

<sup>2</sup> Pursuant to the settlement agreement between the Employer and the Charging Party, the Employer reimbursed each employee the total amount of union dues that had been deducted from each employee’s pay from October through March 2013.

<sup>1</sup> All dates are 2012, unless otherwise indicated.

deauthorization vote is the date when employees may effectively revoke checkoff authorizations given or renewed while a union-security clause was in effect.” *Albert Van Luit & Co.*, 234 NLRB 1087, 1087 (1978), enf. 597 F.2d 681 (9th Cir. 1979). Thus, it is clear that a union may continue to enforce checkoff authorizations executed under a union-security clause at least until the certification date. *Id.*<sup>3</sup> It is but a small step further to hold that the revocations of such authorizations must also be executed after certification, the seminal event identified in the Act and our precedent as both establishing and terminating the statutory dues obligation.

The judge’s contrary view is largely based on a concurring Board Member’s opinion in two cases involving checkoff revocations in an analogous context. In *Auto Workers Local 1752 (Schweizer Aircraft)*, 320 NLRB 528 (1995), enf. sub nom. *Williams v. NLRB*, 105 F.3d 787 (2d Cir. 1996), and again in *Polymark Corp.*, 329 NLRB 9 (1999), affd. in part, revd. in part sub nom. *Mohat v. NLRB*, 1 Fed. Appx. 258 (6th Cir. 2001), then-Member Truesdale expressed the view that checkoff revocations untimely submitted prior to the statutorily required annual window period for revocation should be construed as an ongoing request, becoming effective at the beginning of the nearest window period for revocability. *Schweizer Aircraft*, above at 532 fn. 14. Although the Board did not directly address how long the charging party remained liable for union dues, the Second Circuit on appeal implicitly rejected Member Truesdale’s position by holding that a union can still insist that an employer deduct union dues under a union-security clause “until the employee executes a timely revocation.” *Williams*, above at 792.

Thus, as is evident from the above, the Board’s longstanding rule is that the results of an affirmative deauthorization election are not effective until the date of certification. Here, the date of the certification of election results is the determinative date for terminating a union-security clause, and not the date of the deauthorization vote. The contrary opinion of Member Truesdale, relied on by the judge, that premature revocations should be held in abeyance until they become effective upon Board certification, runs counter to the thrust of Board precedent. We, therefore, find that the employees’ October 1 revocations of their dues-deduction authorizations were invalid as of that date and that the employees could

<sup>3</sup> In *Lyons Apparel, Inc.*, 218 NLRB 1172 (1975), the Board articulated a narrow equitable exception from the general rule, holding that a union could not enforce its union-security clause requiring a new employee to join and pay initiation fees and dues between the dates of an affirmative deauthorization vote and certification of the results of the election.

only timely revoke their authorizations beginning on October 11, when the certification of election results issued.

Accordingly, we find that the Respondent has not violated Section 8(b)(1)(A) by accepting union dues deducted from employees’ paychecks after those employees prematurely revoked their checkoff authorizations.

#### ORDER

The complaint is dismissed.

*Erin Schaefer* and *Tara O’Rourke*, for the General Counsel.  
*Bryan McCarthy, Esq.*, of Valley Stream, New York, for the Respondent.

#### DECISION

##### STATEMENT OF THE CASE

MICHAEL ROSAS, Administrative Law Judge. This case was tried in Brooklyn, New York, on June 19, 2013. The Service Employees International Union Local 32BJ (Local 32BJ) filed the charge on January 24, 2013,<sup>1</sup> and the General Counsel issued the complaint on January 25, 2013. The complaint alleges that the United Workers of America, Local 621 (Local 621 or the Union) violated Section 8(a)(1) and (2) of the National Labor Relations Act (the Act)<sup>2</sup> by accepting dues deducted from employees’ paychecks and remitted to Local 621 by the joint employer AKAM Associates (AKAM) and The Gretsich Condominium (Gretsich) (the Employer) after employees revoked their checkoff authorizations.<sup>3</sup> Local 621 denies the allegations, asserts that the revocations were untimely and ineffective, and therefore, it lawfully received the dues from the Employer.<sup>4</sup>

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Local 621, I make the following

##### FINDINGS OF FACT

###### I. JURISDICTION

The Employer is a domestic corporation, engaged in providing residential property management at its facilities in New York and Brooklyn, New York, where it annually derives gross annual revenues in excess of \$500,000, and received at its Manhattan and Brooklyn facilities goods and supplies in excess

<sup>1</sup> All dates are 2012, unless otherwise indicated.

<sup>2</sup> 29 U.S.C. § 151.

<sup>3</sup> Shortly before trial, Local 32BJ and the Employer settled the complaint against the latter. As a result, that portion of the consolidated complaint, Case 29–CA–097001, was severed and withdrawn. GC Exh. 1(h).

<sup>4</sup> Local 621 also asserted at par. 19 of its answer, in pertinent part, “that it had a charge pending alleging that it was unlawful for the Employer to unilaterally cease the contractual deduction/remittances as of February 1, 2013, pursuant to the untimely October 1, 2012 revocation. Case 29–CA–104002.” GC Exh. 1(g). That charge, however, was also withdrawn shortly before trial. GC Exhs. 1(g), 2(a)–(b). Nevertheless, Local 621 presented testimony by Carlos Garcia, a Local 621 member, in an attempt to establish unlawful conduct by the Employer. His admissible testimony, which I credit, failed to do that. (Tr. 16–23.)

of \$5000 directly from enterprises outside of New York. Local 621 admits, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Locals 621 and 32BJ are labor organizations within the meaning of Section 2(5) of the Act.<sup>5</sup>

## II. ALLEGED UNFAIR LABOR PRACTICES

The facility at issue is a residential condominium operated by the Employer in Brooklyn, New York (Brooklyn facility). The following employees of the Employer at the Brooklyn facility constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

[A]ll full time and regular part-time janitors, porters, doormen, superintendents, cleaners and maintenance employees employed by Gretsch located at the Brooklyn facility, excluding all other employees, including clerical employees, guards and supervisors as defined in Section 2(11) of the National Labor Relations Act.

Local 621 was the exclusive collective-bargaining representative of the unit. Local 621 and Gretsch were parties to a collective-bargaining agreement (CBA), with an effective term of March 31, 2011, to March 31, 2014. The CBA covered the terms and conditions of employment of the unit, including the following union-security provision:

It shall be a condition of employment that all employees covered by this Agreement who are members of the Union on the execution date of this Agreement shall remain members. All employees who are not members of the execution date hereof shall, as a condition of employment, either become and remain members of the Union on the thirty-first (31st) day following the beginning of their employment, or the effective date or execution date of this Agreement, whichever is later, or if a non-member, pay service fees, which in the case of a regular service fee payer shall be equal to the Union's initiation fees and periodic dues, or in the case of an objecting service fee payer, shall be the proportion of the initiation fees and dues uniformly required, corresponding to the proportion of the Union's total expenditures that supports representational activities and costs.<sup>6</sup>

In a manner set forth in the collective-bargaining agreement, unit employees signed dues deduction authorizations to give the Employer permission to deduct union dues from their paychecks on a monthly basis and remit such dues to the Union. The language contained in the dues-deduction authorizations states, in relevant part:

This authorization is voluntarily made in order to pay my fair share of the Union's cost of representing me for the purposes of collective bargaining, and this authorization is not conditioned on my present or future membership in the Union. This authorization shall be irrevocable for a period of one year from the date hereof or until the termination date of said

agreement, whichever occurs sooner, without regard to whether I am a member of the Union during that period, and I agree that this authorization shall be automatically renewed and irrevocable for successive periods of one year unless revoked by written notice to you and the Union ten (10) days prior to the anniversary of this authorization.<sup>7</sup>

On September 26, 2012, unit employees voted in an election conducted pursuant to a petition filed in Case 29-UD-087588 to rescind the Local 621's authority to require union membership as a condition of employment. The results of the decertification election were certified on October 11, 2012.<sup>8</sup>

On October 1, 2012, unit employees submitted and Local 621 received letters which stated:

I am writing to notify United Workers of America Local 621 ("the Union") that I hereby terminate my membership in the Union effective immediately. I am currently employed by The Gretsch Condominium at 60 Broadway, Brooklyn NY. 11211. As you may know, the employees represented by the Union at this job site recently requested that the National Labor Relations Board supervise a de-authorization election, which was conducted on September 25, 2012 (NLRB Case No. 29-UD-087588). Based on the certified results of that election, the bargaining unit employees are no longer subject to the union security clause contained in the collective bargaining agreement currently in effect between the Company and the Union ("CBA"). Therefore, maintaining membership in good standing with the Union, including the payment of periodic membership dues, initiations fees, agency fees or any other required amounts, is no longer a condition of my employment and I have elected to terminate any and all such membership obligations with the Union at this time.

I am simultaneously providing written notice to the Company of my decision and have rescinded my authorization for the Company to continue to withhold membership dues or fees of any kind from my wages for the purpose of transmitting those amounts to the Union under the dues check-off provision of the CBA. A copy of my letter to the Company is attached for your reference.<sup>9</sup>

On or about October 1, 2012, unit employees submitted, and the Gretsch and AKAM received letters which stated:

I am writing to notify The Gretsch Condominium and AKAM Associates, as my employers, that I hereby rescind, effective immediately, any and all previous authorization(s) I have provided to you to withhold membership dues, initiation fees, agency fees or any other amounts withheld from my wages for the purpose of transmitting such funds to United Workers Of America Local 621 ("the Union") on my behalf under the dues check-off provision of the collective bargaining agreement currently in effect between the Company and the Union ("CBA").

<sup>5</sup> Jt. Exh. 1(a).

<sup>6</sup> Jt. Exh. 1(b).

<sup>7</sup> Jt. Exh. 1(c).

<sup>8</sup> Jt. Exh. 1(d).

<sup>9</sup> Jt. Exh. 1(e).

As you may know, the employees represented by the Union at this job site requested that the National Labor Relations Board supervise a de-authorization election, which was conducted on September 25, 2012 (NLRB Case No. 29-UD-087588). Based on the certified results of that election, I am no longer subject to the union security clause of the CBA. Therefore, maintaining membership in good standing with the Union, including the payment of periodic membership dues, initiations fees, agency fees or any other required amounts to the Union is no longer a condition of my employment and I have elected to terminate any and all such membership obligations with the Union at this time. I am simultaneously providing written notice to the Union of my decision to voluntarily terminate all membership obligations with the Union effective immediately. A copy of my letter to the Union is attached for your reference.<sup>10</sup>

Notwithstanding the aforementioned revocations, during the period of October 2012 to March 2013, the Employer continued to deduct dues from employees' paychecks and remitted them to Local 621. Local 621, in turn, accepted the dues.

#### Legal Analysis

The General Counsel asserts that Local 621 violated Section 8(b)(1)(A) of the Act by accepting dues deducted from the employees' paychecks and remitted by the Employer to the Union after employees revoked their checkoff authorizations on October 1. Local 621 argues that the revocations of the checkoff authorizations were untimely because they were submitted prior to the Regional Director's certification of the September 26 deauthorization election results. The nine employees submitted the revocation letters on October 1, but the Regional Director did not certify the election until October 11, 10 days after they submitted revocation letters. Therefore, Local 621 contends that these revocations were invalid.<sup>11</sup>

An affirmative deauthorization election, held pursuant to Section 9(e) of the Act, invalidates a union-security clause and also provides employees with an opportunity to revoke their checkoff authorizations subsequent to the vote. *Penn Cork &*

*Closures, Inc.*, 156 NLRB 411, 414 (1965), aff'd. 376 F.2d 52 (2d Cir. 1967). However, only after the certification of the election results do employees gain the right to revoke their prior checkoff authorizations. *Albert Van Luit & Co.*, 229 NLRB 811, 813 (1977). Although it is well established that employees may resign from union membership once an affirmative deauthorization vote is certified, the Board has yet to decide whether prematurely submitted revocations automatically become valid following the certification of the deauthorization election. *NLRB v. Alvert Van Luit Co.*, 597 F.2d 681, 686 (1979).

On September 26, nine unit employees voted unanimously to deauthorize the union-security clause contained in the CBA, after which they resign their Local 621 union membership. On October 1, pursuant to the deauthorization election the nine unit employees submitted letters to the Union and the Employer notifying them that they were revoking the checkoff authorizations. However, their revocation letters were prematurely submitted on October 1, since the Board did not certify the election until October 11. See *West Coast Cintas Corp.*, 291 NLRB 152, 155-156 (1988) (checkoff authorizations remained in effect between the date of the deauthorization vote and the certification of the results and until timely revoked by the employees); *Albert Van Luit & Co.*, 229 NLRB at 813 (employer violated the Act by soliciting checkoff authorization revocations from unit employees prior to certification of the election results).

Notwithstanding the premature submission of unit employees' revocation requests, the question remains whether they ripened into valid requests on October 11 when the Board certified the results of the deauthorization election. The Board initially touched on this issue in *Auto Workers Local 1752 (Schweizer Aircraft)*, 320 NLRB 528, 532 fn. 14 (1995). In *Schweizer*, the Board found that employee revocations were untimely submitted approximately 1 month before they were eligible to become effective. In a concurring opinion, however, Chairman Truesdale construed the employee's premature notice of revocation as an ongoing request to be held in abeyance until the nearest window period for revocability.

Chairman Truesdale reinforced that view in *Polymark Corp.*, 329 NLRB 9, 11 fn. 7 (1999), while also noting that the employer's failure to honor the employee's premature revocation at the nearest period for revocability was neither alleged nor litigated as a separate violation of the Act. In dissenting opinions, however, Members Liebman and Fox asserted that contract provisions specifying certain time periods that employees could resign their union membership serve legitimate union administrative purposes. Moreover, they disagreed with the notion that forcing employees to wait 11 months until the next window period for filing a resignation was so onerous as to restrict their Section 7 rights. As such, they would find no violation of the Act by a labor organization failing to honor a resignation filed outside such a window period. See *Polymark*, 329 NLRB at 13. It should be noted, however, that such a view would overturn the Board's ruling in *California Saw & Knife Works*, 320 NLRB 224 (1995), which held that forcing an employee to wait until the next window period to file a "Beck

<sup>10</sup> Jt. Exh. 1(f).

<sup>11</sup> At trial, Local 621 called Carlos Garcia in an attempt to undermine the validity of the revocation letters based on the Employer's involvement in distributing them. However, such a defense was neither affirmatively pled in Local 621's answer nor discussed in its brief. GC Exh. 1(g). Moreover, although I found Garcia credible as to what he observed, I did not credit his uncorroborated testimony as to what the Employer's building manager allegedly told Local 621's shop steward as he handed him the revocation cards. (Tr. 16-23.) See *Rome Electrical Systems*, 356 NLRB 170, 171 at fn. 4 (2010) (Board "may consider probative hearsay testimony that is corroborated by other evidence or otherwise inherently reliable"); Cf. *Dauman Pallet, Inc.*, 314 NLRB 185, 186 (1994) (Board permitted probative hearsay which was corroborated by nonhearsay testimony). Lastly, the proffered involvement of the Employer's manager in this case is distinguishable from the demonstrated and significant involvement of the manager in *Albert Van Luit & Co.*, 234 NLRB 1087 (1978), enf. 597 F.2d 681 (9th Cir. 1979). In that case, the employer's manager delivered revocation forms to employees during the 3-month hiatus between the decertification election and certification. Here, the Employer's manager handed the forms to Local 621's shop steward at an undetermined point in time.

objection,” when the window period had just ended, would restrict the employee’s right to resign from the union.

In contrast to the facts in *Polimark Corp.*, where Members Leibman and Fox would have required members to wait 11 months to exercise their options under the contract, the unit member resignations were premised on regulatory action. Here, the Board certified the *unanimous* vote of unit members to deauthorize Local 621 and the Employer from deducting any more dues. Therefore, the applicable window for revoking employee/member’s dues authorizations was anytime on or after October 11. To adopt Local 621’s rationale, however, it was entitled to ignore the premature requests as invalid and continue deducting union dues indefinitely when there no longer appeared to be a legitimate union administrative purpose that would be served.

As there does not appear to be any legitimate union administrative purpose that would be served by requiring unit members to resubmit their revocation requests on or after October 11, the better approach would be to treat them as having been held in abeyance until the Board certified their unanimous decision on October 11. On that day, the Board’s certification constituted the validation of an otherwise invalid action by unit members, since Local 621 received, but never responded, to their requests. Treating unit members’ premature revocation requests as valid under the circumstances is consistent with Board policy that a union *promptly give effect* to an employee’s resignation. *Teamsters Local 492 (United Parcel Service)*, 346 NLRB 360, 363 (2006) (emphasis added).

Accordingly, Local 621’s continued collection of union dues from unit members after they revoked their checkoff authorizations and the Board certified their vote to withdraw their membership on October 11 violated Section 8(b)(1)(A) and (2) of the Act.

#### CONCLUSIONS OF LAW

1. Locals 621 and 32BJ are labor organizations within the meaning of Section 2(5) of the Act.

2. Akam and Gretsche are an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By refusing or failing to stop collecting union dues from unit members after they voted to deauthorize Local 621 as their labor representative, then notified Local 621 that they resigned from that organization and the Board certified the results of the deauthorization election, Local 621 has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) of the Act.

#### REMEDY

Having found that Local 621 has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The letter requests of unit employees to the Employer and Local 621 revoking their authorization for the collection and remittance of union dues, dated October 1, 2012, shall be given effect as of the date of Board certification, October 11, 2012. Accordingly, Local 621 shall make whole unit members for any union dues collected and remitted to Local 621 between October 11, 2012, and March 2013.<sup>12</sup> Back dues shall be reimbursed with interest thereon as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).

[Recommended Order omitted from publication.]

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<sup>12</sup> The General Counsel requests a specific amount for each unit member allegedly representing the sum of union dues withheld by the Employer and remitted to Local 621 from October 11, 2012, to March 2013. The amount owed, however, is the extent of dues not already reimbursed to unit employees pursuant to the Local 32BJ’s settlement with the Employer.