

NLRB Division of Advice Decides Laborers' Union Unlawfully Restricts Resignation

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A union's dues check off authorization card that unduly restricted an employee's right to resign union membership violates Section 8(b)(1)(A) of the National Labor Relations Act (NLRA), the National Labor Relations Board's (NLRB) Division of Advice has decided. *Laborers' Local 980 (Tutor-Perini Corp.)*, No. 05-CB-229670 (issued July 29, 2019, released Apr. 10, 2020).

The Division of Advice has instructed NLRB Region 5 to issue a complaint against the union. A part of the NLRB's Office of the General Counsel, the Division of Advice provides guidance to the NLRB's regional offices on difficult and novel issues arising in the processing of unfair labor practice charges.

Section 8(b)(1)(A) of the NLRA provides that a union commits an unfair labor practice if it "restrain[s] or coerce[s] employees in the exercise" of their Section 7 rights, which includes refraining from joining or assisting unions. In *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), the U.S. Supreme Court upheld the NLRB's interpretation of 8(b)(1)(A) as prohibiting union internal rules restricting a member's right to resign.

Laborer's Local 980 arose in Virginia, a right-to-work state prohibiting union security agreements between employers and unions that compel employees to join a union. The union's authorization card said that an employee could revoke the dues check off authorization only during a short window period (beginning 20 days before each anniversary of the collective bargaining agreement and ending 10 days before each anniversary of the collective bargaining agreement). Moreover, the authorization card said, "For the effective period of this checkoff authorization ... I hereby waive any right I may have to resign my union membership." Thus, the card effectively waived the employee's right to resign in perpetuity, subject only to the short window periods.

An employee filed an unfair labor practice charge against the union alleging violation of Section 8(b)(1)(A) by maintaining the provision.

As the Division of Advice noted, resigning union membership and revoking a dues check off authorization are different. Employees may want to resign union membership and free themselves of the obligations it imposes (such as compliance with the union's constitution and bylaws or be fined), while still wanting to continue financial support of the union.

Section 302(c)(4) of the NLRA permits check off authorizations that are irrevocable for one year. That section, as interpreted by the NLRB, allows a union to impose window period requirements at the end of that one-year period and to reject revocation outside of those window periods. This statutory latitude permitting waiver does not apply to other Section 7 rights, such as resigning union membership. The Division of Advice said:

In short, the Union cannot bootstrap the resignation waiver into its dues checkoff authorization, and thereby make resignation subject to the checkoff's revocation window period, without violating the voluntariness principle regarding union membership.

Therefore, it concluded, "[T]he Union violated Section 8(b)(1)(A) by maintaining the [authorization] provision because it unlawfully requires unit employees to agree to an undue restriction on their right to resign union membership, and imposes the restriction when they may only want to waive their distinct right to cease dues check off."

Takeaway

This decision is significant to unionized and non-union employers. For unionized employers, the union may use the cards to restrain employees who wish to work during a strike from resigning membership to avoid union fines. For non-union employers, the union may attempt to obtain similar cards during a union campaign, thus coercing employees into believing they must support the union.

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