UNION MAY NOT COLLECT DUES FROM REHIRED EMPLOYEES WITHOUT RENEWED AUTHORIZATION NLRB JUDGE FINDS

On June 6, an administrative law judge with the National Labor Relations Board found that Teamsters Local 200 committed an unfair labor practice by collecting dues from a rehired employee. The case concerned Julio Mayen, a Wisconsin employee of supermarket chain Roundy's. Mayen signed a union membership card and a dues-checkoff authorization form pursuant to Teamsters Local 200's collective bargaining agreement with Roundy's. A year later, Mayen voluntarily resigned from Roundy's, but he returned to employment with them six weeks later. When he resumed his work, Mayen declined to sign a new dues-checkoff authorization form. Relying on the authorization form from his initial employment, the union continued to collect Mayen's dues. Mayen then filed an unfair labor practice charge against the union, seeking the union cease and desist from collecting dues from him and to also reimburse him for the dues unlawfully collected.

The judge noted that previous NLRB decisions state that the standard for determining whether there is a valid agreement for an employee's agreement to pay union dues is whether the agreement is manifested in "clear and unmistakable language." In making his decision, the judge relied on the NLRB's *Kroger* decision from 2001. In *Kroger*, an employee signed a dues checkoff authorization form. The employee terminated his employment, but returned five months later without signing a new checkoff form. The Board concluded that no per se rule exists that a checkoff authorization can never survive the severance of employment. To determine whether it does, the "clear and unmistakable language" standard must be applied. The *Kroger* Board concluded that it was not clear and unmistakable, and accordingly the Board found for the employee. Relying on the *Kroger* decision as precedent, the judge in this case found for Mayen as well.

The judge did make reference, however, to contractual language the Board suggested in the *Kroger* decision that would satisfy the "clear and unmistakable language" standard. The language reads, "This authorization will remain effective if my employment with the Employer is terminated and I am later re-employed by the Employer." The judge suggested that the utilization of this language in an employment contract would have satisfied the "clear and unmistakable language" standard and allowed the union to continue to collect dues from Mayen. We suggest that this language be used to protect unions that have employees whose employment is intermittent. Although this ALJ decision is subject to review by the NLRB members, it would be wise for unions to protect their interests with such language because anti-union groups have already been campaigning to encourage employees to challenge union security clauses and dues deduction provisions.

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