

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

UNITED STEELWORKERS OF AMERICA, LOCAL UNION 9040

and

ALTO-SHAAM, INC.

Case 2
No. 56713
A-5703

Appearances:

Mr. Douglas Drake, Staff Representative, United Steelworkers of America, AFL-CIO/CLC, District 2, 2525 North 124th Street, Suite 205, Brookfield, WI 53005.

Mr. James C. Schalow, Labor Representative, Alto-Shaam, Inc., P.O. Box 450, Menomonee Falls, WI 53052-0450.

ARBITRATION AWARD

The Union and the Company named above are parties to 1993-1998 collective bargaining agreement, as well as a successor contract for 1998-2002, which provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and resolve a dispute over dues checkoff. A hearing was held on November 6, 1998, in Menomonee Falls, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. A transcript of the proceeding was received on November 14, 1998, and the parties completed filing briefs and the record was closed by January 19, 1999.

ISSUE

The parties did not agree on the framing of the issue. The Union would frame the issue as the following:

Did the Company violate the collective bargaining agreement when it suspended union dues checkoff for Vicky Hagen, Janel Liebau and other similarly situated employees based on an untimely revocation of their union dues checkoff authorization card, and if so, what is the appropriate remedy?

The Company would frame the issue as follows:

Does the labor agreement between Local 9040, USWA and Alto-Shaam, Inc., together with past practices in the administration of the agreement, require Alto-Shaam, Inc. to deduct union dues from the salaries of its employees other than on the basis of a checkoff authorization card signed by each individual employee currently in effect and not revoked by the employee?

The Arbitrator accepts the Union's framing of the issue.

CONTRACT LANGUAGE

SECTION 3 – UNION SECURITY AND CHECK OFF

3.1 It shall be the policy of the Company to remain absolutely neutral and shall not discuss with employees or applicants for employment the merits or non-merits of union membership.

3.2 It shall be a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement, or who thereafter become members of the Union, shall remain members in good standing in the Union as prescribed by the Constitution.

3.3 The Company will check-off monthly dues, assessments and initiation fees, each as designated by the International Treasurer of the union, as membership dues in the Union on the basis of individually signed voluntary Check-Off Authorization Cards. See Appendix I.

3.4 Deductions on the basis of authorization cards submitted to the Company shall be made from the pay which is paid to each employee the first pay day of each month for the previous month and the deduction shall promptly be remitted to the International Treasurer of the union.

3.5 The Local Union shall furnish the company a list giving names and proper identification of employees for whom dues deductions should be made and the number of such deductions.

3.6 The Union will be notified of the reason for non-transmission of dues in case of lay-off, discharge, quit, leave of absence, sick leave, retirement, death, etc.

3.7 The Company, after remittance of funds to the International Treasurer of the Union, will submit to the Local Union a list of the charges in the basic check-off list showing the names and addresses of employees added to or deleted from the list. The Company will also submit to the Local Union copies of each "Summary of Union Dues" Form R115, or its equivalent, and the supporting data relating thereto.

3.8 The Union agrees to save the Company harmless from any actions growing out of these deductions and assumes full responsibility for the disposition of funds so deducted once they have been remitted by the Company.

APPENDIX I

**CHECK-OFF AUTHORIZATION
FOR UNITED STEELWORKERS OF AMERICA**

Company

_____ 19_____
Plant Date

Pursuant to this authorization and assignment, please deduct from my pay each month, while I am in employment with the collective bargaining unit in the Company, and irrespective of my membership status in the Union, monthly dues, assessments and (if owing by me) an initiation fee each as designated by the International Treasurer of the Union.

The aforesaid payment shall be remitted promptly by you to Leo W. Gerard, or his successor, International Secretary/Treasurer of the United Steelworkers of America, or its successor, Five Gateway Center, Pittsburgh, Pa 15222.

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.

I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which such written notice is given; a copy of any such notice will be given by me to the Financial Secretary of the Local Union.

While contributions or gifts to the USWA are not tax deductible as charitable contributions for Federal income tax purposes, they may be tax deductible under other provisions of the Internal Revenue Code.

Local Union No. _____
United Steelworkers of America Signature _____

_____ Check No. _____
Witness Ledger No. _____

BACKGROUND

The parties agreed on the following facts, as prepared and entered as Union Exhibit #10, with portions noted where the Company did not agree:

1. Vicky Hagen was a member of the Union.
2. Vicky Hagen (nee Mier) signed a union dues checkoff authorization form on June 13, 1989.
3. Vicky Hagen's letter resigning her union membership was dated March 12, 1997. (The Union submitted that this letter was within the one year period commencing on the date of signature, referred to on the authorization card. The Company did not stipulate to that statement.)
4. Once the Company received Vicky Hagen's letter resigning her membership, they suspended her dues deduction.
5. (The Union submitted that Vicky Hagen has not paid the dues required by the USWA constitution and is not currently in good standing, as required by Section Three of the collective bargaining agreement. The Company did not stipulate to that statement.)
6. Janel Liebau was a member of the Union.
7. Janel Liebau (nee Luckason) signed a union dues checkoff authorization form on February 1, 1986.
8. Janel Liebau's letter resigning her union membership was dated October 24, 1997. (The Union submitted that this letter was within the one year period commencing on the date of the signature, referred to on the authorization card. The Company did not stipulate to that statement.)
9. Once the Company received Janel Liebau's letter resigning her membership, they suspended her dues deduction.
10. (The Union submitted that Janel Liebau has not paid the dues required by the USWA constitution and is not currently in good standing, as required by Section Three of the collective bargaining agreement. The Company did not stipulate to that statement.)
11. The Union stated that the grievance was timely filed and appealed to the arbitrator. The Company stipulated that there were no procedural objections to proceeding to arbitration.

The Company's Personnel Manager since 1990, Judy Pifher, began working at the Company in 1974 on the assembly line. She was active in forming the local union, and the Steelworkers were elected to represent employees in 1981. Pifher was president of the local union and took part in negotiating the first contract.

During the negotiations for the first contract between the parties, the employees went on strike when the Company refused to budge on giving the Union a union security clause. Pifher recalled that the Company wanted to stay neutral and did not want to force people to join the Union, although it would take off union dues if employees belonged to the Union, and no harm came to the Company. A federal mediator came into this setting. The strike was resolved with the language as seen in the current contract, except that a copy of the checkoff authorization card was added in 1990, which was put in Appendix I.

Pifher was not aware of whether the Company had ever received a copy of the Union's constitution, and she did not think that employees were given copies as they joined the Union. She also testified that the Company has never deducted dues based on anything other than an authorized dues checkoff card. However, if a person revoked his or her dues authorization card, the Company did not deduct dues. Pifher understood the hold harmless clause to mean that the Company was not to be involved in any problems between the Union and employees when it came to dues checkoff.

Pifher recalled that the non-payment of dues following a resignation has come up a couple of times since the first contract. During the 1987 to 1989 period, a number of employees resigned from the Union. The Union asked the Company to discharge 13 employees in grievances numbered 29-89, 30-89, 31-89 and 32-89. Four of them were terminated - Doreen Held Yetka, Kristeen Pechstein, Douglas Owens and Michael Hlavenka. Pifher recalled that a strike took place on July 1, 1990. The Union's staff representative at that time was Robert Glaser, and he asked that the Company reinstate the four employees and he would withdraw a pending arbitration on all the grievances. He also withdrew the request that the Company terminate those four employees based on a violation of the labor contract. All the employees were hired back, except Pechstein who was not hired back because of strike misconduct. During the 1990 negotiations, the parties agreed to put the dues authorization card into the contract.

Vicky Hagen has worked at the Company for several years as a bargaining unit employee. She joined the Union when she started, and signed a checkoff authorization card on June 13, 1989. She received a copy of the labor contract but not a copy of the Union's constitution. She testified that a Union steward, Michelle Guerrera, told her that she could not get out of the Union. She later spoke to someone who told her she could get out of the Union. On March 12, 1997, she sent a letter to the Company stating:

To whom it may concern:

I Vicky Hagen, do hereby resign all ties to the Local 9040 United Steelworkers of America Union. As of this 12th day of March 1997 I will no longer be a participant or member in the union meetings and activities. As of date above union dues and checkoffs shall be omitted.

After she sent the above letter, the Company stopped deducting dues. Hagen heard from the Union by a phone call, a visit to her house, and letters in the mail. She testified that she did not know what kind of letter or letters she received from the Union, that she just threw them out. She could not recall whether anyone told her that she had to pay dues whether she was in the Union or not. She has not paid any dues to the Union.

The Union Staff Representative, Douglas Drake, sent Hagen a letter dated March 24, 1997, in which he brought the following items to her attention:

1) The current labor agreement between the Company and the USWA included the following:

Section 3.2 (page 2)

It shall be a condition of employment that all employees covered by this Agreement who are members in good standing on the effective date of this Agreement, or who thereafter become members of the Union, shall remain members in good standing as prescribed by the Constitution.

Under this section of the contract, you are required to pay the monthly dues, as defined by the USWA Constitution. Failure to pay such dues would force the Union to insist that the Company terminate your employment.

2) In addition to the terms of the Contract, the USWA dues checkoff card that you signed includes a request by you to the Company for payroll checkoff of the monthly union dues. Under the terms of that checkoff card, you are obliged to continue such monthly dues checkoff until either the anniversary of the date on which you signed the checkoff card or the termination of the current labor agreement, whichever occurs sooner. A copy of the checkoff card is enclosed for your examination.

3) According to our records, your letter of March 12 does not conform to the dates of your union dues checkoff card. Therefore, we must insist that the Company continue to deduct union dues from your paycheck.

4) Even if your request to withdraw from union dues checkoff were to be granted, you would remain liable for prompt payment by hand of your monthly union dues.

If you have any questions, feel free to contact me.

The Union also sent Hagen a letter regarding political or ideological expenditures reduction procedure. The letter, dated May 28, 1997, and sent by certified mail, is as follows:

You have resigned your membership in the USWA and its Local 9040 by letter, mailed on March 12, 1997. Your resignation is effective as of March 13, 1997, the day following the mailing date.

Section 3 of the Alto-Shaam labor agreement makes it “a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement, or who thereafter become members of the Union, shall remain members in good standing in the Union as prescribed by the Constitution.” This union security provision applies to you because you were a union member on the effective date of the agreement. Your only obligation under this union security clause is to pay monthly an amount equivalent to the regular union dues amount to the USWA. There is no requirement that you be a union member.

An employee, who is subject to a contractual union security clause such as that in the Alto-Shaam labor agreement but who is not a union member, has elected effectively financial core fee payer status. As a financial core fee payer, you remain obligated by the union security provision to pay each month an amount equivalent to the regular union dues amount. The regular union dues amount is 1.3% of the employee’s total earnings during the month provided that the monthly amount shall not be less than \$5.00 and provided further that the monthly amount shall not be more than 2.5 times the employee’s average hourly earnings.

An employee who is subject to a contractual union security clause such as that in the Alto-Shaam Agreement but who is not a USWA member also has the statutory right to object to any part of his or her union security amount payment being expended by the USWA for nonrepresentational activities such as charitable, political or legislative activities. Based upon total expenditure data for 1994, it has been determined that the USWA's expenditures for representational activities amount to 92.65% of its total annual expenditures (82.46% if expenditures for organizing activities are considered to be non-representational activities as indicated by the position of the National Labor Relations Board). An employee who so objects will be charged an appropriate dues equivalency amount based solely upon representational expenditures, which for purposes of expediency will be 82.46% of the regular dues amount. These rights are embodied in the USWA's Political Or Ideological Expenditures Reduction Procedure ("Procedure"), a copy of which is enclosed.

Your letter is not a timely revocation of your dues check-off authorization because it was not sent within an appropriate 15 day revocation period as set forth on the card. It is my understanding that a copy of your dues check-off authorization card has been sent to you is also enclosed.

Please be advised that you no longer have any membership rights in the USWA and its Local 9040. Therefore, you have no right to nominate or vote in union elections or to be a candidate in those elections, no right to participate in or attend union meetings or other union functions, and no right to vote on contract ratification. I sincerely hope you will reconsider your decision to resign your membership and that you will choose to be a full USWA member because the participation of all employees in the union makes it a stronger, more effective collective bargaining representative. Please be assured that your present decision will be respected.

A similar letter was sent to Liebau on April 1, 1998, by certified mail, noting that her resignation was effective as of October 25, 1997, and that her obligation to pay union security amounts would be 83.11% of the regular dues amount each month from October of 1997 to the present.

Janel Liebau has been employed at the Company since the mid-1980's. She signed a checkoff authorization card on February 1, 1986. She originally supported the Union, but later heard that not everyone was in the Union. She wrote a letter to the Company, dated October 24, 1997, that is the same in substance as Hagen's letter noted above. The Company stopped deducting union dues. She received a letter from the Union but testified that she did not really understand it. She also did not understand the provisions of the dues checkoff card when she signed it.

Michael Hlavenka started working for the Company in 1986 in the factory. He had joined the Union, but later decided to resign from it. He heard from the Union by letter that he still owed it money, even though the Company was no longer taking dues out of his paycheck. While he was participating in a strike, he got a letter from the Company telling him he was terminated because he owed the Union money. Hlavenka talked with Union officials who told him that they were taking care of it, not to worry, that they would get his job back. He came back to work at the Company and never paid any back dues.

THE PARTIES' POSITIONS

The Union

The Union submitted a written position at the hearing and filed a reply to the Company's brief. The Union notes that the language at issue has been in place since at least 1990. It is neither unusual nor vague and is common throughout collective bargaining agreements. The language in Section 3 is commonly known as maintenance of membership and it provides that it shall be a condition of employment that bargaining unit employees who are or who become members of the Union shall remain members of the Union.

Further, the language in Section 3.3 provides that the Company honors union dues checkoff cards. A copy of the current dues checkoff card is also reproduced in the contract. The checkoff card authorizes the Company to deduct union dues, irrespective of membership status, for a period of one year from the date of signature or the termination of the current collective bargaining agreement between the Company and the Union, whichever is sooner.

The Union contends that the Company failed to abide by the terms of the contract, including, but not limited to Section 3.3, by suspending the union dues deductions for Hagen and Liebau and others similarly situated. Hagen signed a checkoff authorization card on June 13, 1989, and on March 12, 1997, submitted to the Company a letter resigning her membership in the Union. The Company suspended the union dues checkoff deductions for Hagen on March 12, 1997. Liebau signed a union dues checkoff authorization card on February 1, 1986, and on October 24, 1997, submitted to the Company a letter resigning her membership in the Union. The Company suspended the union dues checkoff deductions for Liebau on October 24, 1997.

The Union states that Section 3.3 commits the Company to honor the USWA Checkoff Authorization Card, Form 530, which was submitted as Joint Exhibit #5. The card clearly provides for a method of revocation. However, such revocation must fall within the one-year anniversary period of signature or the termination of the collective bargaining agreement, whichever is sooner. Absent a timely revocation, the authorization is renewed. Hagen and Liebau did not submit timely revocations of their checkoff authorization.

Hagen could have revoked her authorization within 15 days of her signature anniversary date of June 13, but such revocation is not timely before or after such date. Liebau could have revoked her authorization within 15 days of her signature anniversary date of February 1, but such revocation is not timely before or after such date.

The Union submits that the Company has committed to honoring the Union's dues checkoff card which authorizes the Company to deduct union dues irrespective of membership status. The Union believes the Company is obligated to continue dues checkoff until an individual makes a timely revocation of such dues checkoff. Any suspension of dues deduction by the Company that is not timely violates the bargaining agreement. Section 3.1 commits the Company to remain absolutely neutral with respect to the merits or non-merits of union membership. The Company's action to unilaterally suspend union dues deductions based on untimely revocations of such union dues checkoff authorizations not only violates Section 3.3, but violates – in spirit if not in deed – the pledge of neutrality in Section 3.1. The Company's action serves to aid and abet employees who seek to resign from the Union.

The Company has argued that it must be responsive to individual employee requests to revoke union dues deductions. However, the Union counters that this argument flies in the face of the Company's stated obligation to honor the USWA Dues Authorization Card as provided for in Section 3.3. Furthermore, Section 3.8 provides that the Union shall hold the Company harmless in the application of the bargaining agreement with respect to union dues deduction. The Company claims that this hold harmless clause bars any action by the Union against the Company. This is a misreading of the clause. The Union states that the hold harmless clause immunizes the Company against action by an individual for actions taken by the Company to enforce this section of the contract, including maintenance of membership provisions and the deduction of union dues. This "consideration" granted to the Company is in exchange for its commitment to deduct union dues.

Accordingly, the Union asks the arbitrator to rule that the Company violated the collective bargaining agreement when it suspended the union dues deductions for Hagen and Liebau, as well as other similarly situated employees, on the basis of a revocation of union dues checkoff authorization that was not timely. The Union asks as a remedy that the Company be ordered to reinstate the union dues checkoff authorization of Liebau and Hagen, as well as other similarly situated employees, until such employees make a timely revocation of their union dues checkoff authorization card.

Certainly individuals have the right to become "financial core" members or political objectors. The Union states that this is not a dispute about BECK or its application. The Union does not seek nor intend to violate the individual rights of union members to object to political or ideological expenditures. Nothing in BECK diminishes the rights of the Union to enforce the terms of its union dues checkoff authorization card or the obligations of bargaining unit employees who are members of the Union and who have signed a dues checkoff authorization card. The Union sent letters to Hagen and Liebau explaining their rights to become financial core members.

The Company

The Company notes that at the hearing, it reserved its right to raise further issues, and it raised due process issues on behalf of Hagen and Liebau and the issue as to whether or not they were properly informed once they joined a union on how to get out. They are not members for life.

The Company states that the threshold question is – what does the collective bargaining agreement require the Company to do when deducting dues and what authorization does the agreement provide the Company when the Company takes away funds from an individual employee's pay? The Company notes that in Section 3.3, membership dues in the Union are checked off on the basis of individually signed voluntary checkoff authorization cards. In Section 3.4, deductions are made on the basis of authorization cards submitted to the Company.

The Company asserts that a clear reading of those clauses mandates a conclusion that the Company is only authorized to take employee wages by way of Union dues checkoff when such employee on an individual basis, voluntarily authorizes the deduction by an in-force dues check off authorization card. The Company has always acted in a manner commensurate with that mandate.

The current Personnel Manager, Ms. Pifher, initially brought the Union to the Company. She served as the Union's first president and took part in the negotiations for the first labor contract. She also participated in negotiations for successor contracts on one side or the other. Her testimony,

which was never rebutted, indicated that if a person revoked their dues authorization card, the Company did not deduct dues. Ms. Pifher testified that the union security provision was the main reason the Union went on strike when the Company would not budge on the issue. She further testified that the Company wanted to stay neutral and did not want to force people to join the Union. If employees wanted to belong, the Company would take off the union dues. No harm was to come to the Company for deducting dues.

Thus, the Company asserts, the two-pronged save harmless clause in Section 3.8 was bargained into the labor agreement. The Company was not to have any liability for deducting initial union membership and dues checkoff, for deductions or revoking dues checkoff or for any disposition of the funds once collected. The Company has never taken a position on the position on the BECK issue and agreed in Appendix G to checkoff political action contributions from earnings but only in accordance with written authorizations from each employee. Again, the Company was held harmless and only deducted dues based on written authorization of each individual employee.

Ms. Pifher further testified that the hold harmless clause meant that the Company was not to be involved in any problems or disputes between the Union and employees when it came to dues checkoff. The Union pointed out that the language in the contract came from the Union. Ms. Pifher also acknowledged that in 1989 some employees resigned from the Union during the 1989 strike.

The Company submits that the remedy of the Union for employee defection and unjust revocation of dues checkoff is between the Union and employee. The Union may, and has, demanded that the Company enforce the “condition of employment” remedy available in Section 3.2 of the contract. The Company further notes that the union’s letter to Liebau dated April 1, 1998, states that her only obligation is to pay monthly an amount equivalent to the regular dues amount to the USWA. Nothing prevents an employee from paying union dues directly to the Union without Company dues deduction. The Company’s obligations for deductions ceases when individually signed voluntary checkoff authorization cards are revoked and no longer voluntary.

The testimony proved that when the Company acceded to the Union’s demand to enforce the “condition of employment” clause, the Union told the affected employee that it would get his job back, and the employee never paid any back dues.

The Company asks – who speaks for the employee? Once dues cease to be paid, it is the Union versus the employee. The Company cannot easily speak for the employee, and that leaves the employee’s advocate to be the arbitration system and the arbitrator. The labor agreement provides that those who become members of the Union shall remain members in good standing in the Union as prescribed by the Constitution. However, the testimony of Pifher, Hagen and Liebau showed that none of the employees received copies of the Union Constitution. No one was ever told how to get out of the Union. When Hagen asked Union Steward Michelle Guerrera how to get out of the Union once she joined, she was told that she couldn’t get out.

The Company contends that due process requires fair and reasonable notice as to provisions for quitting the Union be provided to joining employees. The fundamental right to employment belongs to the employee, not to the Union. With the exercise of extraordinary intuition or the aid of a psychic, the employee may have satisfied the Union’s process of resignation, but due process requires nothing less than notice and a right to procedural fairness.

While it is the Union's position that only a 15 day revocation period is available and that the Company unilaterally suspended union dues deductions, the Company does not unilaterally begin deducting dues or suspending dues checkoff. That is only done at the request of the employee. The Union also speaks of a violation in spirit if not in deed of the pledge of neutrality, but the Company owes that pledge to the employee as well as the Union. The Union further argues that the hold harmless clause immunizes the Company against action by an individual. That is true, but the Company does not have to be held harmless only by the individual, but also by the principal signatories to the labor agreement, including the United Steelworkers of America.

The Company concludes by stating that the Arbitrator should make an award relieve the Company of any obligation to deduct dues by way of checkoff other than on the basis of a checkoff authorization card signed by an individual employee currently in effect and not revoked by the employee.

The Union's Reply

The Union replies to the Company by stating that the terms of revocation can only be as provided on the card itself. The checkoff authorization card is an appendix to the contract, giving additional weight to the express terms of the card. Thus, it is the Company's obligation under the contract to honor the terms of the dues checkoff authorization card, unless timely revoked.

There is no question that Liebau and Hagen did not make timely revocation of their union dues checkoff authorization card. The employee who signs a union dues checkoff authorization card authorizes the Company to withhold union dues for the period specified on the card, and the Company has agreed to honor the terms of the card by contract. Therefore, the Company is obligated to continue to withhold union dues deductions until such authorization is timely revoked under the terms of the card.

In response to the Company's contention that it is to be held harmless under the contract, the Union submits that the hold harmless clause releases the Company from "any actions growing out of these deductions." Since there were no deductions, how could the hold harmless clause apply to the failure to deduct dues? It is only when the Company complies with the terms of the contract and the union dues checkoff authorization card and withholds union dues deductions that the Company acquires the protection of the hold harmless clause.

The Union contends that Pifher's testimony regarding the hold harmless clause should be disregarded. She was not the author of the language. Union security language is at the heart of labor-management relations and obviously a matter of concern to the Union. The hold harmless clause is the consideration granted the Company for its agreement to honor the union dues checkoff authorization card.

While the Company has raised a concern for due process, there is no allegation of coercion against employees who signed cards. The terms of the cards are available to the employees when they sign them, and the card is reproduced in the contract. Both Hagen and Liebau got copies of the labor agreement. The Union communicated with them regarding their rights and responsibilities under the labor contract and under applicable federal law.

The Union notes that the Company attempted to muddy the waters by referring to a work stoppage in 1990, but that is beyond the scope of this proceeding to revisit that action. The parties changed the body of the contract following the 1990 work stoppage and included a copy of the dues checkoff authorization card as an appendix. The Union submits that the parties reaffirmed that the Company would honor the dues checkoff authorization card and strengthened their commitment to do so by including the card in the contract.

DISCUSSION

The parties have agreed to a union security clause and have further agreed to a dues checkoff clause. Clearly, the Company has an obligation to deduct dues and it has violated Section 3.3 of the collective bargaining agreement by failing to deduct dues for Hagen and Liebau who had signed dues checkoff authorization cards which were still in effect when they tried to revoke them.

Both Hagen and Liebau's attempts to revoke their checkoff authorization cards were untimely, and consequently invalid. The Company knows that their revocations were invalid, and it knows the window periods for a proper revocation. The periods of time for revocation are clearly stated in the checkoff authorization card itself, which was made an appendix to the labor contract in 1990 and has remained in it.

While the Company has argued that the employees have no longer voluntarily authorized it to deduct dues from their wages, the Company is obligated by the contract to continue deducting dues on the basis of the authorization cards. The authorization cards are voluntarily entered into and remain in effect by their own terms for successive periods of one year from the date signed by the employees. The employees have, by virtue of their signatures, further voluntarily agreed that the authorization to deduct dues cannot be cancelled except during window periods clearly spelled out in the authorization cards. The authorization cards give notice of the times to revoke such authorization, and the employees in this case did not meet those times. While the Company has put much emphasis on the "voluntary" nature of authorization cards, it has ignored all the terms of the card which were voluntarily entered into. Just as a contract once signed remains in effect as a voluntary agreement until its expiration, so do the authorization cards.

Whatever the Company did in the past – if it indeed stopped deducting dues based on untimely revocations – does not protect it from a contract violation where the contractual language is clear and unambiguous. The contract language is clear enough on its face and there is no need to resort to any past practice to interpret the language. Even if one accepts the argument that past practice is necessary to help interpret the contract, the past practice here does not meet the traditional definition of a binding past practice. There is no clear and unequivocal practice, readily ascertainable over a reasonable period of time and accepted by both parties.

The Company has also argued that the hold harmless clause should relieve it of any dispute between the Union and employees over dues checkoff. The hold harmless clause states in Section 3.8: "The Union agrees to save the Company harmless from any actions growing out of these deductions and assumes full responsibility for the disposition of funds so deducted once they have been remitted by the Company." (Emphasis added.) The Company has made no deductions and therefore Section 3.8 does not apply to this grievance. The Company is still responsible for making the deductions under Section 3.3, and it has not done so. It is to be held harmless for actions following the deductions or actions arising from the deductions, but it cannot violate the labor agreement by not deducting dues in the first place.

The Company has also raised some issues about its neutrality, due process and fair notice to employees, and asks who speaks for the employees. The labor contract is between the Union and the Company, and the Company's obligation is to honor its commitments under the contract. The employees, while being represented for purposes of collective bargaining by the Union, may take their disputes with the Union forward without the Company's involvement at all. The dues checkoff authorization card which the parties attached to their labor contract gives employees fair notice about how to revoke the authorization.

In sum, I find that the Company has violated the collective bargaining agreement by suspending dues checkoff for Hagen and Liebau, and the remedy the Union seeks is reasonable and shall be so ordered.

AWARD

The grievance is granted.

The Company is ordered to reinstate the union dues checkoff authorization of Janel Liebau and Vicky Hagen, as well as any other similarly situated employees, and continue to deduct such dues until such employees make a timely revocation of their union dues checkoff authorization cards.

Dated at Elkhorn, Wisconsin this 5th day of February, 1999.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator