

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

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EMPLOYEE RELATIONS  
COMMISSION

MAR 15 1982

In the Matter of )  
 )  
WILLIAM G. MCCARTHY, JR. )  
 )  
Charging Party )  
 )  
vs. )  
 )  
AMERICAN FEDERATION )  
OF STATE, COUNTY AND )  
MUNICIPAL EMPLOYEES )  
(AFSCME), Local 685 )  
 )

UFC 70.26  
HEARING OFFICER REPORT  
AND RECOMMENDATIONS

I. FACTUAL BACKGROUND

The parties stipulated to the facts which can be summarized as follows. Mr. William McCarthy, Jr., the charging party, was a member of the American Federation of State, County and Municipal Employees, Local 685 which represented probation officers working for the County of Los Angeles (T.R. pp. 3 and 6). On October 24, 1979, Mr. McCarthy authorized the County of Los Angeles to deduct his union dues from his paycheck (T.R. p. 1, Joint Ex. 1). At that time the Memorandum of Agreement between Local 685 and the County contained a provision which allowed dues deduction to be discontinued only during a 15 day period from August 1 to August 15, 1980. (T.R. p. 4 Joint Ex. 2); this agreement ran from September 1979 to June 30, 1981 (Joint Ex. 2). Mr. McCarthy did not seek to terminate his union membership during this period (T.R. p. 4).

In 1981 a new Memorandum of Agreement was reached on July 24 and made effective July 1 of that year. This Memorandum contained a similar 15 day escape period, which would occur between August 1, and August 15, 1982 (Joint Ex. 3).

On July 28, 1981 Mr. McCarthy requested cancellation of his union membership and of his dues deduction. This request was denied by the authorized agent of the union on August 3, 1981 (T.R. p. 5).

## II. DISCUSSION

### A. Preliminary Positions of the Parties

The argument of the charging party is very straight forward. Section IV of the Employee Relations Ordinance of the Los Angeles County [hereinafter referred to as ERO] guarantees employees "the right to refuse to join or participate in the activities of employee organizations." Violation of this right is an unfair practice under ERO Section XII (b) (1) which states as follows: "[i]t shall be an unfair practice for employee organizations or their representatives. . .[t]o interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this ordinance. . . ." The charging party asserts respondent's denial (through its acting director) of his request to drop his Union membership and

cancel the union dues deduction from his paycheck interfered with his right to refuse to join or participate in the Union.

Respondent argues that its refusal to allow the charging party to withdraw from Local 685 and cancel his dues checkoff was made under a valid union security provision (Article 25 Section 2) of the respondent's Memorandum of Agreement with the County (Joint Ex. 3 & 4). This brief summary of the positions of the parties demonstrates that the validity of the union security provision is at the heart of this unfair practice charge.

B. The Union Security Provision

At the time (October 24, 1979) that the charging party authorized the dues deductions, the Memorandum of Agreement between the County of Los Angeles and the American Confederation of State, County and Municipal Employees, Local 685 contained the following provision:

Security Clause

Any employees in this unit who have authorized Union dues deductions on the effective date of this agreement or at any time subsequent to the effective date of this agreement shall continue to have such dues deduction made by the County during the term of this agreement; provided, however, that any employee in the unit may terminate such

Union dues deduction during the period August 1 to August 15, 1980, by notifying the Union and the County, by certified mail, of their termination of Union dues deduction (Article 25, Section 2, Joint Ex. 3)

The agreement containing this provision expired June 30, 1981 (T.R. 4, Joint Ex. 2). The agreement in effect on July 28, 1981, the time that the charging party sought to withdraw his membership, was identical to the above provision except that the escape period ran from August 1 to August 15, 1982. (Article 25 Section 2, Joint Ex. 3). The term of this agreement ran from July 1, to July 30, 1983 (Joint Ex. 4).

The effect of the union security provision mentioned above is two-fold. First the provisions prevent employees from withdrawing immediately after contract ratification, and secondly they allow the discontinuance of union dues during a brief period which occurs only once every two years.

### C. The Issues

The above provisions on their face would appear to interfere and restrain employees in their right not to participate in union activities. However, in the history of labor relations in this country, various forms of union security have been allowed as legitimate means of protecting the continued existence of unions without interfering with employee rights. Therefore the specific issues to be addressed

herein are 1) what form of union security exists in Article 25 Section 2 and 2) is this form of union security permissible under the ERO?

D. Form of Union Security

1. Agency Shop

There are three possible forms of union security which must be considered; agency shop, maintenance of membership, and check-off. "Typical agency shop agreements provide that employees, as a condition of continued employment, must either become members of the union or pay the union a service fee" (Morris, Developing Labor Law 707). Although both parties discuss agency shop and cite cases dealing with agency shop, neither the language of Article 25 Section 2 nor any external evidence established that the employment with the County under the Memorandum of Agreement is conditioned upon union membership. Article 25 Section 2 of the Agreement does not establish an agency shop.

2. Maintenance of Membership

Maintenance of membership is a form of union security in which those employees who are members of the union at the time the contract is executed or at some later time must remain members as a condition of continued employment (Id.). Again

the language of Article 25 Section 2 does not indicate that continued membership is a condition of employment. However, it is not uncommon for a maintenance of membership provision to have "an escape period" which will allow union members to withdraw at certain times. In practice the provision under discussion here operates to some degree like a maintenance of membership provision with an escape period.

### 3. Dues Check-off

The third and mildest form of union security is the dues check-off. Basically a dues check-off amounts to an agreement by which the employer will collect union dues and pay them to the union (Id., at 716); employment is not conditioned on membership or payment. The dues check-off may be subject to a limited escape period similar to the one in Article 25 Section 2. If Article 25 Section 2 is considered to be merely a dues check-off, it should be noted that the provision is a rather stringent form of check-off agreement: the term for the check-off runs for two years, the check-off spans the expiration of the contract, and the escape period is brief. However, since there is no evidence of union membership being a condition of employment and the charging party has not been threatened by loss of employment, Article 25 Section 2 shall be treated herein as a dues check-off provision.

E. The Validity of the Union Security

Article 25 Section 2, as a rather stringent check-off system, is permissible under the provisions of the Employment Relations Ordinance. The charging party cites no section of the Employment Relations Ordinance (other than the provisions under discussion here) or the rules and regulations of the Employee Relations Commission which prohibits check-off provisions. In addition the hearing officer can find no expressed provision or inherent policy to prevent such a check-off arrangement.

In support of his position, the charging party cites City of Hayward v. United Public Employees Local 390, 54 Cal. App. 3rd 761 (1976). Cases such as this one decided under the Myers-Melias-Brown Act (Cal. Gov't Code §§ 3500 et seq.) are welcome precedent; however, Hayward does not resolve the issue since it stands for the proposition that a worker's employment cannot be conditioned upon union membership or the payment of a service fee to the union. In other words, Hayward, prohibits the agency shop, and the agreement under discussion here does not constitute an agency shop.

There is substantial precedent for the validity of a voluntary check-off agreements. It is widely accepted means of union security under the National Labor Relations Act.

(Morris, Developing Labor Law 707; See, NLRB v. Brotherhood of Railway Clerks, 498 F.2d 1105 (5th Cir. 1974); NLRB v. Food Fair Stores 307 F.2d 3 (3d Cir. 1962); American Screw, 122

NLRB 485 (1958)). There are no policy reasons why the rule in the public sector should be different. Payroll deductions are allowed under the Myers-Melias-Brown Act. Sacramento County Employees Organization Local 22 v. County of Sacramento, 28 Cal. App. 3rd 424 (1972). And California Government Code section 3546 expressly allows maintenance of membership, a more stringent form of union security for educational employees. And the Meyers-Melias-Brown Act has been recently modified to allow the agency shop one of the most stringent forms of union security (California Gov't Code 3502.5 as amended 1982).

Nor are the requirements of union organizations in the public sector different from those in the private sector. Union organizations are difficult to build and maintain. The premise of collective bargaining laws like the National Labor Relations Act, the various state employment relations acts in California, and the Los Angeles County Employment Relations Ordinance is that unions benefit workers by collectively representing them. As democratic institutions, unions are entitled to make rules and regulations to facilitate their ability to represent their members. The check-off of dues, as a mild form of union security, does facilitate the ability of unions to represent their members. Like all institutions unions have bills to pay and promises to keep. In order to make plans for the future, unions must to some extent be assured of income and membership.

Since this form of union security is widely accepted and as long as there is no express prohibition, the rights of the

individual employee do not outweigh the union's need in this area. The workers and the charging party in this case enter the dues deduction arrangement voluntarily and indeed reap the benefits in not having to pay dues in a lump sum. The limitations on rescinding the dues deduction are imposed by the union membership. The union is not asking too much in seeking fiscal support which it can count on for a reasonable period.

The respondent's refusal to allow the charging party to rescind his dues deduction was not an unfair practice within the provision of the ERO. This refusal was made pursuant to a valid check-off provision in the Memorandum of Agreement between the Union and the County of Los Angeles.

### III. RECOMMENDED FINAL ORDER

Unfair Practice Charge 70.26 is hereby denied. No action should be taken against the Respondent American Federation of State, County and Municipal Employees, Local 685.

Respectfully submitted,

  
H. Anthony Miller  
Hearing Officer