

4. This Court also has jurisdiction over all counts pursuant to 28 U.S.C. §§ 2201 and 2202 because declaratory relief is sought.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to the case occurred in this judicial district.

PARTIES

6. Plaintiff Martin Carter was, at all relevant times, and currently is, employed as an Assistant Operator on the 272 Six Color Graphics Printer by Packaging Corporation of America (“PCA”) at its Burlington Container Plant (“Plant”) located at 1600 South Pine Street, Burlington, Wisconsin, 53105. Plaintiff is employed within a bargaining unit represented by, and is a former member of, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local Union No. 231 (“Local 231” or “Union”).

7. Defendant PCA is a corporation with a principal office located at 1 North Field Court, Lake Forest, IL 60045. It transacts business in this judicial district, including at the Plant. Defendant PCA employs Plaintiff and other employees at its Plant and has recognized Defendant Local 231 as the exclusive bargaining representative for certain employees, including Plaintiff, at that Plant.

8. Defendant Local 231 is a labor organization that represents employees covered by the NLRA at PCA’s Plant located at 1600 South Pine Street, Burlington, Wisconsin 53105, and transacts business in this judicial district.

9. Defendant Local 231 is the exclusive representative for the purpose of collective bargaining for certain PCA employees at the Plant, including Plaintiff.

FACTS

10. On information and belief, prior to May 1, 2017, PCA and Local 231 were parties to a collective bargaining agreement that contained an “agency shop” clause, which required Plaintiff and other employees to join or financially support Local 231 as an employment condition.

11. PCA and Local 231 have a current collective bargaining agreement that went into effect on, or about, May 1, 2017 and expires on April 30, 2023 (“CBA”). This agreement does not have a provision requiring compulsory fees as a condition of employment.

12. When Carter began his employment with PCA on, or about, October 22, 2013, he signed a Local 231 membership application and a dues checkoff authorization (“checkoff”) on the information and belief that it was an employment condition to do so.

13. Carter’s signed checkoff states, in pertinent part:

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 Employer, 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 Secretary/Treasurer of the Union.

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 of the date of the current collective bargaining agreement between the Employer 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 facility in which I am employed, an individual written notice signed by me and which shall be postmarked or received by the Employer within fifteen (15) days following the expiration of any such year or within the fifteen (15) days following the termination date of any collective bargaining agreement between the Employer 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. . . .

14. Hereinafter, the term “Window Period” is defined as the sole yearly period (lasting for a mere fifteen (15) days) during which the Union will accept an employee’s notice of his or her checkoff revocation and thereafter honor the revocation a month later.

15. The principal purpose of Local 231’s Window Period is to burden and thwart employees’ legal rights to revoke their checkoff and refrain from financially assisting the union.

16. Local 231’s checkoff automatically renews upon its anniversary date each year and continues in effect unless the checkoff is revoked pursuant to the Window Period language.

17. Pursuant to the Window Period, the employee must submit his or her revocation for the existing effective period to the union within fifteen days *after* the checkoff automatically renews for the next effective period. The Union does not immediately honor the revocation but only considers the revocation effective “the month following the month in which such written [revocation] notice is given.” Meaning, the employee’s annual checkoff is effective for at least 367, and up to 426 days.

18. Local 231’s Window Period requirement is not necessary for achieving any administrative or legitimate purpose because, among other things, the fifteen (15) day period applicable to each employee varies arbitrarily, based on when he or she signed his or her checkoff.

19. On or about November 15, 2018, Carter hand-delivered a letter resigning his Union membership and revoking his checkoff to PCA.

20. That same day, Carter also attempted to submit a copy of his November 15, 2018 resignation and revocation letter to the Union by handing it to the third-shift Union Steward Kevin Kugler. Kugler refused to accept the letter, and notified Carter that he had to give his letter to

Union President Eric Licht.

21. On or about November 16, 2018, Carter attempted to give his November 15, 2018 resignation and revocation letter to the first-shift Union Steward Chuck Dorsey, who also refused to accept it and directed him to give the letter to Union President Licht.

22. On or about November 16, 2018, Carter hand-delivered his November 15, 2018 resignation and revocation letter to Union President Licht.

23. After receipt of Carter's November 15, 2018 resignation and revocation letter, PCA ceased deducting dues from his wages and delivering them to Local 231.

24. In December 2018, Carter was informed that PCA intended to resume deducting dues from his wages. On or about December 19, 2018, Carter hand-delivered a second letter to PCA stating that he did not authorize the resumption of dues deductions from his wages or PCA's remittance of those dues or fees to the Union.

25. In a letter dated the same day, PCA notified Carter that it was required to resume dues deductions pursuant to his checkoff because the Union had informed PCA it had received Carter's November 15, 2018 resignation and revocation letter on November 16, 2018 and rejected his revocation as untimely based on his checkoff.

26. On or about January 3, 2019, PCA resumed deducting dues from Carter's paychecks and delivering them to Local 231, who accepted them.

27. In 2015, Wisconsin enacted a Right to Work Law, 2015 Wisconsin Act 1, which amended Wis. Stat. §§ 111.04 and 111.06 ("Right to Work Law").

28. The Right to Work Law makes it unlawful for an employer or union to require, as an employment condition, employees to be union members or to pay any union dues or fees.

29. The law applies to any contract entered into, renewed, modified, or extended on or

after March 11, 2015. *See* 2015 Wis. Act 1, §13.

30. But for PCA's and Local 231's refusal to honor Carter's checkoff revocations, he would not have paid any dues or fees to the Union after he delivered his November 15, 2018, resignation and revocation letter.

CLAIMS FOR RELIEF

Count I: PCA and the Union Violated LMRA Section 302 By Maintaining and Enforcing a Facially Invalid Checkoff

31. Paragraphs 1 through 30 are incorporated herein by reference.

32. LMRA Section 302(a)(2) states, in pertinent part, that “[i]t shall be unlawful for any employer or association of employers . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value . . . to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer” 29 U.S.C. § 186(a)(2).

33. LMRA Section 302(b)(1) reciprocally makes it “unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).” 29 U.S.C. § 186(b)(1).

34. Section 302(c)(4), provides that the statute's prohibitions “shall not be applicable . . . with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.” 29 U.S.C. § 186(c)(4).

35. PCA commits a prima facie LMRA § 302(a)(2) violation by delivering dues it deducted from Plaintiff's wages to Local 231 without a valid authorization under LMRA § 302(c)(4).

36. Similarly, Local 231 commits a prima facie LMRA § 302(b)(1) violation by requesting, demanding, receiving, accepting, and or agreeing to receive or accept any money from PCA in the form of dues or fees deducted and collected from Plaintiff's wages without a valid authorization.

37. The Plaintiff's checkoff does not comply with LMRA § 302(c)(4)'s requirements because it is irrevocable for a period of greater than one year. Specifically, Plaintiff's checkoff renews each year on its anniversary date, but it cannot be revoked for the previous effective period until the Window Period, which occurs the fifteen (15) days *after* the checkoff's anniversary date. Moreover, even if an individual revoked during the Window Period, pursuant to Plaintiff's checkoff's terms, that revocation is not valid until some point in the month after the revocation is received—367 to 426 days after the checkoff's effective date.

38. Thus, pursuant to Plaintiff's checkoff's terms, it is irrevocable for over one year—up to one year and sixty-one (61) days—which is longer than permissible by LMRA § 302(c)(4).

39. Since the checkoff does not comply with LMRA § 302(c)(4)'s exception that the irrevocability period must not exceed one year, PCA violated, and continues to violate, LMRA § 302(a)(2) by deducting dues from Plaintiff's wages and delivering them to the Union without a valid authorization.

40. Since the checkoff does not comply with LMRA § 302(c)(4)'s exception that the irrevocability period must not exceed one year, the Union violated, and continues to violate, LMRA § 302(b)(1) by requesting, demanding, receiving, accepting, and or agreeing to receive or accept from PCA, dues PCA deducted from Plaintiff's wages without a valid authorization.

41. But for PCA's deductions of dues from Plaintiff's wages and remittance thereof to the Union pursuant to an unlawful checkoff, Plaintiff would have no obligation to pay the Union

any fees, pursuant to Wisconsin's Right to Work Law.

**Count II: In the Alternative, PCA and the Union Violated LMRA § 302
When They Rejected Plaintiff's Checkoff Revocations**

42. Paragraphs 1 through 41 are incorporated herein by reference.

43. Alternatively, if Count I fails, PCA's delivery of deducted dues from Plaintiff's wages to Local 231 and Local 231's acceptance of those deducted dues from PCA after Plaintiff's checkoff revocation are not exempt from LMRA § 302(b)(1)'s prohibitions by LMRA § 302(c)(4)'s exemption because, among other things: (i) Plaintiff's checkoff was validly revoked, such revocation becoming effective on the one year anniversary of the signature date; and (ii) Local 231's Window Period is invalid under LMRA § 302(c)(4) because it adds an additional irrevocability period restriction not statutorily authorized.

44. PCA violated LMRA § 302(a)(2) by deducting dues from Plaintiff's wages and delivering them to the Union without a valid authorization.

45. The Union violated LMRA § 302(b)(1) by requesting, demanding, receiving, accepting and/or agreeing to receive or accept dues deducted from Plaintiff's wages from PCA without a valid authorization.

46. But for PCA's deductions of dues from Plaintiff's wages and remittance thereof to the Union and the Union's request, demand, receipt, and/or acceptance of those dues pursuant to an unlawful checkoff, Plaintiff would have no obligation to pay the Union any dues or fees, pursuant to Wisconsin's Right to Work Law.

**Count III: The Union Breached Its Duty of Fair Representation By Maintaining and
Enforcing Extra-Statutory Rules Restricting Revocations**

47. Paragraphs 1 through 46 are incorporated herein by reference.

48. A union that acts as employees' exclusive representative owes a fiduciary duty of

fair representation to those employees. A union breaches its duty of fair representation if its conduct is discriminatory, arbitrary, or in bad faith. *See Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

49. Local 231 has acted, and is acting, arbitrarily towards Plaintiff by both (1) maintaining and enforcing a checkoff with an irrevocability period exceeding one year in violation of Section 302(c)(4), 29 U.S.C. § 186(c)(4); and (2) maintaining and enforcing the Window Period because, among other things, it has no legitimate reasons or interests for impeding employees' right to revoke their checkoffs in both of these manners.

50. Local 231 has acted, and is acting, in bad faith towards Plaintiff by maintaining and enforcing the (1) facially invalid checkoff; and (2) Window Period restriction because, among other things, these policies' illegitimate purpose is to impede and frustrate employees' exercise of their right not to financially assist or otherwise associate with the union.

51. By, and through, the conduct described above, Local 231 has breached, and continues to breach, its duty of fair representation to Plaintiff.

Count IV: PCA and the Union Violated Wisconsin's Right to Work Law

52. Paragraphs 1 through 51 are incorporated herein by reference.

53. Wisc. Stat. § 111.06(1)(i) prohibits employers from deducting union dues "unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable by the employee giving to the employer at least 30 days' written notice of the termination."

54. Wisc. Stat. § 111.06(3) makes it an unfair labor practice "for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subs. (1) and (2)."

55. Wisc. Stat. § 111.07(1) allows controversies concerning unfair labor practices to be pursued in “courts of competent jurisdiction.”

56. Plaintiff’s checkoff only permits it to be terminated if he meets the specific Window Period of fifteen (15) days per calendar year.

57. PCA enforced this Window Period against Plaintiff by (1) stating his revocation was untimely, (2) refusing to honor his revocation, and (3) continuing to deduct dues from his wages and delivering them to Local 231 more than thirty (30) days after receipt of Carter’s written notice of the termination of his checkoff.

58. Local 231 caused PCA to enforce the Window Period against Plaintiff by (1) notifying PCA that Plaintiff’s revocation was untimely, (2) requiring PCA to deduct dues from Plaintiff’s wages and deliver them to Local 231 more than thirty (30) days after receipt of Carter’s written notice of the termination of his checkoff, and (3) accepting those dues.

59. PCA violated Wisc. Stat. § 111.06(1)(i) by deducting dues from Plaintiff’s wages pursuant to a checkoff that is not terminable upon thirty (30) days written notice and continued to do so more than thirty (30) days after receipt of Carter’s written notice of the termination of his checkoff.

60. Local 231 violated Wisc. Stat. § 111.06(3) by causing, or attempting to cause, PCA to deduct dues from Plaintiff’s wages pursuant to an illegal checkoff in violation of Wisc. Stat. § 111.06(1)(i).

61. But for PCA’s deductions of dues from his wages and remittance thereof to the Union pursuant to an unlawful checkoff, Plaintiff would have no obligation to pay the Union any fees, pursuant to Wisconsin’s Right to Work Law.

62. But for Local 231’s demand and acceptance of those dues PCA deducted from

Plaintiff's wages and remitted to Local 231, Plaintiff would have no obligation to pay the Union any dues or fees, pursuant to Wisconsin's Right to Work law.

63. Plaintiff recognizes this Court may be bound by the U.S. Court of Appeals for the Seventh Circuit's decision in *International Ass'n of Machinists Dist. 10 v. Allen*, 904 F.3d 490 (2018), which found Wisc. Stat. § 111.06(1)(i) to be preempted by federal law and enjoined the Secretary of the Wisconsin Department of Workforce Development and the Chairman of the Wisconsin Employment Relations Commission from enforcing Wisc. Stat. § 111.06(1)(i).

64. However, that case, in large part, relied on the U.S. Supreme Court's order of affirmance in *Sea Pak v. Industrial, Technical & Professional Employees, Div. of National Maritime Union*, 400 U.S. 985 (1971). The actual opinion in that case is a District Court opinion, which was summarily affirmed by both the Fifth Circuit and the Supreme Court. See *IAM Dist. 10*, 904 F. 3d at 508 (Manion, J., dissenting). Such an order "deserves a fresh look. *Sea Pak's* holding that all state regulation of checkoff agreements is preempted does not fit comfortably within the *Machinists* doctrine." *Id.* (citing *Lodge 74, Int'l Ass'n of Machinists & Aerospace Workers v. Wisc. Emp't Relations Comm.*, 427 U.S. 132 (1976)) (Manion, J., dissenting). Moreover, *Sea Pak* does not "stand up to any scrutiny under modern general preemption doctrine [D]evelopments over the last 47 years have eroded the precedential value of *Sea Pak* to such an extent that we are no longer obliged to follow it." *Id.* (Manion, J., dissenting).

65. Plaintiff pursues this supplemental claim to allow the United States Supreme Court the opportunity to reevaluate and overrule *Sea Pak*.

66. This Court has original jurisdiction over Counts I–III, as established in Paragraphs 1–2.

67. The state law claims of Count IV are related to the claims of Counts I–III and arise

out of and form part of the same case or controversy so that the Court should take supplemental jurisdiction over the state law claims of Count IV, pursuant to 28 U.S.C. § 1367.

68. Therefore, Plaintiff respectfully requests that the Court exercise its supplemental jurisdiction over this claim and enforce Wisc. Stat. § 111.06(1)(i) against PCA and Local 231.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

A. **Declaratory Judgment:** Enter a declaratory judgment that:

1. Plaintiff's checkoff facially is unlawful as it is not compliant with LMRA § 302(c)(4);
2. The Window Period contained in Plaintiff's checkoff is null and void;
3. Plaintiff's checkoff is invalid pursuant to Wisc. Stat. § 111.06(1)(i);
4. PCA violated:
 - a) LMRA § 302(a)(2) by delivering monies it deducted from Plaintiff's wages without valid authorization; and
 - b) Wisc. Stat. § 111.06(1)(i) by maintaining and enforcing a checkoff that is not revocable upon thirty (30) days' notice;
5. Local 231 violated:
 - a) LMRA § 302(b)(1) by accepting from PCA monies deducted from Plaintiff's wages without valid authorization; and
 - b) Wisc. Stat. § 111.06(1)(i) by maintaining and enforcing a checkoff that is not revocable upon thirty (30) days' notice;
6. Local 231 breached its duty of fair representation to Plaintiff by maintaining and enforcing the Window Period in Plaintiff's checkoff;

B. Permanent injunction:

1. Issue a permanent injunction that enjoins PCA from:
 - a) Enforcing a checkoff with an irrevocability period greater than one (1) year;
 - b) Maintaining and enforcing the Window Period contained in Plaintiff's checkoff;
 - c) Maintaining and enforcing a checkoff that is not revocable upon thirty (30) days' notice; and
 - d) Deducting dues from Plaintiff's wages and delivering those amounts to the Union;
2. Issue a permanent injunction that enjoins Local 231 from:
 - a) Enforcing a checkoff with an irrevocability period greater than one (1) year;
 - b) Maintaining and enforcing the Window Period contained in Plaintiff's checkoff;
 - c) Maintaining and enforcing a checkoff that is not revocable upon thirty (30) days' notice; and
 - d) Requesting, demanding, receiving, accepting, and/or agreeing to receive and/or accept any money from PCA that has been deducted from the Plaintiff's wages;

C. Damages/Restitution: Issue an order of damages or equitable restitution that requires Local 231 and PCA to return all illegally seized dues and/or fees to Plaintiff;

D. Costs and Attorneys' Fees: Award Plaintiff his costs, including reasonable attorneys' fees;

E. Retain jurisdiction over this action for a reasonable period of time after entering a final judgment to ensure PCA and Local 231 complies with this Court's Orders; and

F. Order any other legal and/or equitable relief the Court deems just and proper.

Respectfully submitted this 30 day of May 2019.

/s/Alyssa K. Hazelwood

Alyssa K. Hazelwood

Milton L. Chappell

Amanda K. Freeman

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c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
Telephone: 703-321-8510
Facsimile: 703-321-9319
akh@nrtw.org
mlc@nrtw.org
akf@nrtw.org

Attorneys for Plaintiff