

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local Lodges Nos. 95 (Unit #9), 148, 376, 509, 699, 723, 887, 1609, and 172 (Various Employers) and Various Individuals Marine Draftsmen Association (MDA) UAW Local 571 (Electric Boat Division, General Dynamics Corporation) and Various Individuals. Cases 31-CB-7841, 31-CB-8183, 31-CB-8259, 31-CB-8641-(1-8), 31-CB-8641-(12,13,15-18, 21, 24, 25), and 31-CB-8641-(26-28)

December 20, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

On August 16, 1999, the National Labor Relations Board issued its decision and order in *Auto Workers Local 95 (Various Employers)*.¹ On June 9, 2000, the United States Court of Appeals for the District of Columbia Circuit issued its opinion denying enforcement in part of the Board's decision and order.² The court held, in pertinent part, that the Respondents International Union and Local 376 (Respondents) violated Section 8(b)(1)(A) and (2) by causing the Employer, Colt Industries, to discharge nonmember employee George Gally for nonpayment of dues without first informing him of the amount by which his union fees would be reduced if he became a *Beck*³ objector. The court remanded that portion of the case to the Board to determine an appropriate remedy for the Respondents' violation of the Act. On September 26, 2000, the Board accepted the court's remand. On May 4, 2001, the Board invited the parties to file statements of position. Thereafter, the General Counsel, the Charging Party, and the Respondents filed statements of position.

The National Labor Relations Board has considered the court's remand in light of the record and the parties' statements of position. For the reasons that follow, we shall order the Respondents to cease and desist from their unfair labor practices, to make Gally whole for any loss of wages or other benefits suffered by him as a result of the Respondents' causing his discharge without first providing him with the information required by the court of appeals' decision, and to notify the Employer that they

have no objection to Gally's reinstatement and affirmatively request his reemployment. However, for the reasons set forth below, we shall allow the parties to litigate at the compliance stage of this proceeding the question of whether Gally is entitled to any backpay.

Facts

Charging Party George Gally, an employee of Colt Industries at its Hartford, Connecticut facility, was a member of Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 376 from 1963 until July 1985, when he resigned his memberships. At all material times since July 1985, Gally has been a nonmember of the Respondents. While employed by Colt, Gally was covered by a collective-bargaining agreement that included a union-security clause.

In October 1990, Gally ceased paying any dues or fees to the Respondents. There is no complaint allegation, nor is it asserted, that Gally had at any time exercised his right under *Beck* to object to the payment of his dues and fees for nonrepresentational purposes. By letters dated February 7 and March 18, 1991, Respondent Local 376 notified Gally of the amount of his dues arrearages, representing amounts equivalent to full union dues. The letters further stated that if the specified amount was not paid, the Respondent Local would seek Gally's discharge pursuant to the union-security clause of the then-current collective-bargaining agreement between Colt and the Respondent Local. On April 1, 1991, the Respondent Local notified Colt that Gally had failed to pay his dues and that the parties' agreement required Gally's discharge under those circumstances. Colt discharged Gally on April 10, 1991, pursuant to the Respondent Local 376's demand.⁴

In August 1989 and June 1990, the Respondents sent Gally its magazine *Solidarity*, which contained articles notifying employees of their right under the Supreme Court's *Beck* decision to object to the payment of union dues and fees for nonrepresentational purposes. These notices did not state the amount by which Gally's fees would be reduced if he were to become a *Beck* objector. The notices did state that nonmembers who pay dues to the Respondents pursuant to a union-security clause could file objections to the payment of dues for nonrepresentational purposes and that objectors would receive a report of expenditures, which provided the basis for the amount charged for the relevant period of time.

¹ 328 NLRB 1215.

² *Thomas v. NLRB*, 213 F.3d 651.

³ *Communications Workers v. Beck*, 487 U.S. 735 (1988) (unions may not, over the objection of dues-paying nonmember employees, expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment).

⁴ It apparently is undisputed that Gally was reinstated by Colt on October 6, 1992.

The Board's Decision

The Board held that “the duty of fair representation does not require that initial *Beck* notices must contain the percentage of union funds spent in the last accounting year on nonrepresentational activities.”⁵ Because Gally had resigned his union membership but had not exercised his right under *Beck* to object to the payment of his dues and fees for nonrepresentational purposes, the Board held that the failure to provide him with this information did not violate the duty of fair representation as embodied in Section 8(b)(1)(A) of the Act.⁶ The Board also held that, because the Respondents had fully complied with their obligations under *Beck*, their actions in causing Gally's discharge for nonpayment of dues did not violate Section 8(b)(2).⁷

The Court of Appeals' Decision

The court held, in pertinent part, that pursuant to its decision in *Penrod v. NLRB*,⁸ “potential objectors like Mr. Gally are entitled to be informed of the amount by which their fees would be reduced were they to become *Beck* objectors.”⁹ The court further observed that

[i]t is unclear, however, whether Mr. Gally is entitled to the remedy he seeks, given the Supreme Court's holding that objecting nonmembers are not excused from paying disputed agency fees until a final judgment is rendered in their favor. See *Railway Clerks v. Allen*, 373 U.S. 113, 120, 83 S.Ct. 1158, 10 L.Ed. 2d 235 (1963). Accordingly, we grant Mr. Gally's petition for review and remand the case to the Board to determine an appropriate remedy for the Union's statutory violation.¹⁰

The court had previously characterized “the remedy that he [Gally] seeks” as “reinstatement and backpay.”¹¹

Positions of the Parties

The General Counsel asserts that the appropriate remedy for the violation identified by the court of appeals is

an order requiring the Respondents to notify the Employer that they do not object to Gally's reinstatement and to make him whole for any loss of wages or benefits from the date of his discharge until the date of his reinstatement. Citing to *Teamsters (Ryder Student Transportation)*,¹² *Production Workers Local 707 (Mavo Leasing)*,¹³ and *Monson Trucking*,¹⁴ the General Counsel contends that a union may not lawfully seek an employee's discharge for failing to pay dues under a union-security clause when it has not provided the employee with notice of his or her *Beck* rights. In light of the court's remand, the General Counsel asserts that the Respondents' failure to provide Gally with the percentage reduction in fees that would be applicable to objectors is tantamount to a failure to provide any *Beck* notice and should be remedied in the same manner that such violations are remedied. The General Counsel asserts that *Brotherhood of Ry. & S.S. Clerks v. Allen*,¹⁵ cited by the court of appeals in its remand, is factually distinguishable and does not preclude an award of backpay under the circumstances of this case.

The Charging Party likewise asserts that Gally is entitled to full backpay. According to the Charging Party, when a union fails to provide an employee with an adequate *Beck* notice, the employee is privileged to use self-help by withholding dues from the union, and any effort by the union to seek an employee's discharge for nonpayment of dues under these circumstances is unlawful. Citing *Rochester Mfg. Co.*,¹⁶ the Charging Party asserts that the Board should also order nationwide nunc pro tunc relief, including notice postings, opportunities for employees to resign and object retroactively to the 6 months prior to the filing of Gally's charge, and backpay in the form of dues collected from those who object after receiving a lawful notice.

The Respondents assert that Gally is not entitled to any backpay. Citing *Railway & S.S. Clerks v. Allen*,¹⁷ the Respondents contend that objecting employees must continue to pay full dues while their challenge to the union's use of their fee payments is pending. The Respondents suggest that this principle is especially applicable in this case, because Gally, despite notice of the Respondents' fee objection system, failed to make any objection known but instead ceased to pay dues without explana-

⁵ *Auto Workers Local 95 (Various Employers)*, supra, 328 NLRB at 1218.

The Board also held that the use of a “local presumption” to determine the amount of its each locals' chargeable expenses did not violate Sec. 8(b)(1)(A). Id. at 1216–1218.

⁶ Id. at 1218–1219.

⁷ Id. at 1219.

⁸ 203 F.3d 41 (D.C. Cir. 2000), denying enf. to 327 NLRB 950 (1999). *Penrod* issued after the petition for review had been filed in this case.

⁹ *Thomas v. NLRB*, supra, 213 F.3d at 655–656.

The court also affirmed the Board's determination that the Respondents' use of a “local presumption” was not unlawful. Id. at 660.

¹⁰ Id. at 656.

¹¹ Id. at 654.

¹² 333 NLRB 1009, 111 fn. 3 (2001).

¹³ 322 NLRB 35 (1996), enf. 161 F.3d 1047 (7th Cir. 1998).

¹⁴ 324 NLRB 933, 935 (1997), enf. 204 F.3d 822 (8th Cir. 2000).

¹⁵ Supra, 373 U.S. 113.

¹⁶ 323 NLRB 260, 262–264 (1997), aff. 194 F.3d 1311 (6th Cir. 1999), cert. denied 529 U.S. 1066 (2000).

¹⁷ Supra, 373 U.S. 113.

tion.¹⁸ With respect to requests for broader relief, the Respondents assert that their *Beck* procedures have changed substantially since 1992 and that any question concerning whether their current notice procedures are sufficient to satisfy the duty of fair representation should be left to future litigation. In particular, the Respondents assert that all members and nonmembers now receive notice of their *Beck* rights both when they are hired and annually thereafter, and that the annual notices since 1992 have included the percentage of nonrepresentational expenditures from its annual fee report for the prior year.

Analysis

In *Communications Workers v. Beck*,¹⁹ the Supreme Court held that unions may not, over the objection of dues-paying nonmember employees, expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment. In *Chicago Teachers Union v. Hudson*,²⁰ the Supreme Court described procedures unions are required to adopt in order to protect the rights of objectors. As pertinent to this proceeding, the Supreme Court in *Hudson* stated that

[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect [the nonunion employees' rights].²¹

Although *Hudson* involved public sector employment and, hence, constitutional concerns, the D.C. Circuit has applied the basic protections of *Hudson* in *Beck* cases involving private sector employees.²²

In *Penrod*, the D.C. Circuit summarized what it held were the relevant legal principles in the following terms:

Unlike full union members and financial core payors, employees who object to funding nonrepresentational activities, called "*Beck* objectors," pay reduced dues. *Beck* objectors are also known as 'potential challengers' because they have a right to chal-

lenge the union's calculation of the reduced dues; in response to such challenges, the union bears the burden of justifying its calculation.

...

In *Hudson*, the Supreme Court held that "[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee." *Abrams* expressly applies *Hudson's* requirements to new employees and financial core payors. Since *Hudson* requires that potential objectors be told the percentage of union dues chargeable to them—for how else could they "gauge the propriety of the union's fee"—and since *Abrams* applies *Hudson* to new employees and financial core payors, they too must be told the percentage of union dues that would be chargeable were they to become *Beck* objectors.²³

Applying *Penrod*, the court of appeals found in this case that the Respondents violated Section 8(b)(1)(A) by causing Gally's discharge for nonpayment of dues without first providing him with a *Beck* notice that included the amount by which his fees would be reduced if he became a *Beck* objector. The court of appeals has thus, in effect, found that the Respondents' failure to notify Gally of the amount by which his dues would be reduced if he became a *Beck* objector prevented him from exercising his right to decide whether to become an objector. We accept the court's findings as the law of the case. The remaining question, as the court of appeals has recognized, is whether "Gally is entitled to the remedy he seeks."²⁴

The principal area of dispute between the parties is whether Gally is entitled to backpay for the period following his discharge by Colt, at the Respondents' request. In cases where a union has caused an employer to discharge an employee without providing the employee with any notice of his or her *Beck* rights, in violation of Section 8(b)(1)(A) and (2), the Board will remedy the violation by ordering the respondent union inter alia, to make whole the employee for any loss of wages and benefits suffered as a result of the unlawful conduct until the employee is either reinstated by the employer to his or her former or a substantially equivalent position, or until he or she obtains substantially equivalent employment elsewhere, less net interim earnings.²⁵ We hold

¹⁸ The Respondents cite *Machinists v. Street*, 367 U.S. 740, 774 (1961), for the proposition that "dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee."

¹⁹ *Supra*, 487 U.S. at 745.

²⁰ 475 U.S. 292 (1986).

²¹ *Id.* at 306.

²² *Thomas v. NLRB*, *supra*, 213 F.3d at 658 (citing *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1379 fn. 7 (D.C. Cir. 1995)).

²³ *Penrod*, *supra*, 203 F.3d at 44, 47 (citations omitted).

²⁴ *Thomas v. NLRB*, *supra*, 213 F.3d at 654.

²⁵ See, e.g., *Teamsters Local (Ryder Student Transportation)*, 333 NLRB 1009, 1009–1010 (2001); *Monson Trucking*, *supra*, 324 NLRB at 936–938; *Production Workers Local 707 (Mavo Leasing)*, *supra*, 322 NLRB at 36. The Board will also order the respondent union to: cease

provisionally that Gally is entitled to a make whole order in order to remedy the violation found by the court of appeals. In the particular circumstances of this case, however, we shall afford the Respondents an opportunity to establish, at the compliance stage of this proceeding, that Gally was a “free rider,” i.e., that he “willfully and deliberately sought to evade his union-security obligations.”²⁶ If the Respondents make this showing, Gally will not be entitled to any backpay.

The Board has long held that, prior to seeking the discharge of an employee for failure to pay dues or fees, a union must inform the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the fact that discharge will result from failure to pay.²⁷ In *California Saw & Knife*,²⁸ the Board held that a union has an obligation, when or before it seeks to obligate an employee to pay fees and dues under a union-security provision, to inform the employee of his *Beck* and *General Motors* rights to be and remain a nonmember; and, if nonmember status is chosen, to object to paying for nonrepresentational activities, to be given sufficient information to intelligently decide whether to object, and to be apprised of internal union procedures for filing objections. It follows that, in the absence of the required notice of *Beck* rights, a union may “not seek to enforce the union-security provision by causing or seeking to cause the discharge of [nonmember employees] in order to obligate them to pay dues and fees under that provision.”²⁹

However, even if it is established that a union has not fully complied with its fiduciary obligations with respect to enforcement of a union-security clause, the Board has

consistently stated that it will not apply those requirements so rigidly “as to permit a recalcitrant employee to profit from his own dereliction in complying with his obligations as a union member.”³⁰ Thus, the Board will excuse a union’s failure to fully comply with the notice requirements when it is shown that the employee involved was a “free rider,” who “willfully and deliberately sought to evade his union-security obligations.”³¹

The Board has not previously addressed the issue of whether Gally was a free rider. The case was presented to the Board on the General Counsel’s Motion for Summary Judgment. There is, accordingly, no record evidence bearing on the circumstances under which Gally stopped paying dues, i.e., whether or not Gally would have paid any dues or fees even if he had been fully informed of his *Beck* rights. The Board did not address this issue in its prior decision in this case in light of its finding, on other grounds, that the Respondents’ actions in causing Gally’s discharge were not unlawful. Under the unique circumstances of this case, we shall afford the Respondents an opportunity to litigate Gally’s alleged free rider status at the compliance stage of this proceeding.³² We recognize that the Respondents did not explicitly raise the free rider issue as a defense to the allegation of a violation, and are now foreclosed from doing so. However, the free rider issue is also relevant to that portion of the remedy which requires the payment of backpay. If the Respondents can show in compliance that Gally would not have paid dues and fees even if he had been given a full *Beck* notice, that showing will relieve the Respondents from backpay liability.

Our decision to leave to compliance the determination of whether Gally is entitled to any backpay is consistent with the terms of the court’s remand in this case. The court of appeals remanded the proceeding to the Board to consider whether Gally is entitled to backpay in light of the principles set forth in the Supreme Court’s decision in *Brotherhood of Ry. & S.S. Clerks v. Allen*, *supra*. In our view, the court’s remand encompasses consideration of the free rider issue in the manner set forth herein.

In *Allen*, a Railway Labor Act case, railroad employees filed suit in State court against their union after the union sought to collect from them full dues, some of which was spent on nonrepresentational expenditures, even though the employees were not members of the

and desist; notify the employer that it has no objection to the discriminatee’s reemployment and that it affirmatively requests his or her reemployment; notify the employee of the employee’s rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963) (employees have right to become and remain nonmembers) and *Beck*; remove from its files, and request the employer to remove from its files, any reference to the discharge; and post an appropriate notice to employees and members. No party disputes the appropriateness of these remedies in light of the violation found by the court of appeals. Although Gally was reinstated in 1992, we find that requiring the Respondents to notify Colt that they have no objection to Gally’s reinstatement and affirmatively request his reemployment, is necessary in order to fully neutralize the effects of the Respondents’ unlawful actions.

²⁶ *Teamsters Local 630 (Ralph’s Grocery)*, 209 NLRB 117, 125 (1974).

²⁷ *I.B.I. Security*, 292 NLRB 648, 649 (1989). See also *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962), *enfd. sub nom. NLRB v. Hotel Employees Local 568*, 320 F.2d 254 (3d Cir. 1963).

²⁸ 320 NLRB 224, 233 (1995), *enfd. sub nom. Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub nom. Strang v. NLRB*, 525 U.S. 813 (1998).

²⁹ *Production Workers Local 707 (Mavo Leasing Co.)*, *supra*, 322 NLRB at 35. See also *L.D. Kichler Co.*, 335 NLRB 1427, 131 fn. 18 (2001); *Monson Trucking*, *supra*, 324 NLRB at 936.

³⁰ *Teamsters Local 630 (Ralph’s Grocery)*, *supra*, 209 NLRB at 124.

³¹ *Id.* See also *Ryder Student Transportation*, *supra*, 333 NLRB 1009 fn. 3; *I.B.I. Security*, *supra*, 292 NLRB at 649.

³² See *Berkshire Farm Center*, 333 NLRB 367 (2001) (Board leaves to compliance stage employer’s contention that employee’s right to backpay was forfeited when employee engaged in misconduct, in light of judge’s failure to apply proper standard in considering issue at liability stage of proceeding).

union at the time. The court enjoined the union from requiring the employees to pay any money to the union, with the provision that the injunction would be modified appropriately if the union showed the proportion of its expenditures from dues that was reasonably necessary and related to collective bargaining.³³

The Supreme Court held that the State court injunction was improper insofar as it relieved the employees of any obligation to pay dues, even though the injunction was subject to modification if the union came forward and proved the proportion of exacted funds required for purposes germane to collective bargaining.³⁴ The Supreme Court cited its prior holding in *Machinists v. Street*³⁵ that dissenting employees

remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. Their . . . grievance stems from the spending of their funds for purposes not authorized by the [Railway Labor] Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds.³⁶

The Supreme Court stressed that an injunction precluding the future collection of dues by the union “sweeps too broadly . . . [and] might well interfere with the . . . unions’ performance of those functions and duties which the Railway Labor Act places upon them to attain its goal of stability in the industry.”³⁷ The Supreme Court also stated that no employee could be entitled to relief absent proof that the employee objected to the use of his or her dues for political purposes.³⁸ In support of this holding, the Supreme Court cited its observation in *Street* that “dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee.”³⁹

Our decision to leave to the compliance stage of this proceeding the issue of whether Gally should be denied backpay as a free rider is consistent with the issues discussed in *Allen*. *Allen* addresses the obligation of objecting employees to pay union dues and fees while their challenge to the union’s use of their fee payments is pending, and the requirement, previously articulated by the Supreme Court in *Street*, that employees are not entitled to relief from the obligation to pay full dues unless they have affirmatively made known their objections to the union. These considerations are relevant to the free

rider analysis set forth above, which similarly calls for a consideration of the circumstances under which Gally stopped paying dues. Having accepted the court’s remand, we shall afford the Respondents an opportunity to litigate this issue.

The Respondents appear to contend that *Allen* and *Street* preclude a make whole order in this case regardless of the circumstances under which Gally ceased paying dues. We reject that contention. In *Allen*, the Supreme Court expressed its concern that the injunction before it, which broadly prohibited the collection of any dues from the plaintiff employees, would interfere with the unions’ ability to carry out their representative functions. Our order, in contrast, requires the Respondents to cease and desist from failing to notify employees of their rights under *General Motors* and *Beck*, when it seeks to obligate them to pay fees and dues under a union-security clause, and prohibits the Respondents from causing the discharge of an employee, for nonpayment of dues, unless that notice requirement has been satisfied. Our order does not prohibit the Respondents from collecting dues from unit employees, and therefore does not violate the principles set forth in *Allen*.

Our order also does not violate the rule, set forth in *Street*, that “dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee.”⁴⁰ For the reasons set forth above, the Respondents could not lawfully cause Gally’s discharge for nonpayment of dues without first providing him with adequate notice of his *Beck* rights. Our order only requires the Respondents to make Gally whole for any loss of wages or benefits suffered as a result of their causing his discharge without having first satisfied their obligation to provide him with that notice, subject to the Respondents’ right to litigate Gally’s alleged free rider status at the compliance stage. Nothing in our order requires the Respondents to treat Gally, or any other employee, as a *Beck* objector, for purposes of determining the amount of dues they owe, unless the employee properly asserts objector status. Accordingly, our order is consistent with the principle that dissent is not to be presumed. In sum, we do not presume dissent on Gally’s part. Rather, we find unlawful the Respondents’ failure to inform him of his rights regarding dissent. And, we deal with the consequences of that failure.

Finally, we reject the Charging Party’s request that broader relief, such as that provided in *Rochester Mfg. Co.*,⁴¹ be directed in this case. In *Rochester*, the General Counsel alleged, and the Board found, that the respon-

³³ Id. at 116–117.

³⁴ Id. at 120.

³⁵ Supra, 367 U.S. at 740.

³⁶ Id. at 771.

³⁷ *Allen*, supra at 120 (quoting *Street*, supra at 771).

³⁸ Id. at 118–119.

³⁹ *Street*, supra at 774.

⁴⁰ Id.

⁴¹ Supra, 323 NLRB 260.

dent unions violated Section 8(b)(1)(A) by failing to notify all unit employees of their rights under *General Motors* and *Beck*, including current members of the respondent union who had paid union dues without having received notice of their right to become a *Beck* objector. In order to restore the status quo ante as to those individuals, the Board's remedial order included nunc pro tunc relief in the form of opportunities for employees to resign and object retroactively to the 6 months prior to the filing of the charge in that case, and reimbursement of dues previously collected from those who object. The complaint allegation remanded by the court of appeals in this case, in contrast, is limited to the Respondents' requesting the discharge of Gally, a nonmember employee at all times material to this case, without first providing him with proper notice of his *Beck* rights. The complaint allegation before us does not allege a failure to inform unit employees generally of their *General Motors* or *Beck* rights. The remedy therefore addresses the violation alleged and found.⁴²

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondents unlawfully caused the Employer to discharge George Gally, we shall order the Respondents to notify the Employer in writing, with a copy to the discriminatee, that they have no objection to his employment and that they affirmatively request his reinstatement. We shall also order the Respondents to notify Gally of his rights under *NLRB v. General Motors Corp.* and *Beck* and to inform him that he is not subject to discharge for nonpayment of union dues in the absence of such notification. In light of the court's remand, the notice must include the amount by which Gally's fees would be reduced were he to become a *Beck* objector. We shall further order the Respondents, jointly and severally, to make Gally whole for any loss of wages and benefits he may have suffered as a result of its unlawful conduct, less interim earnings, from the date of his discharge until the date of his reinstatement by the Employer. All amounts of make-whole relief shall be computed with interest as provided for in *New Horizons for the Retarded*.⁴³ Finally, as discussed fully above, the Respondents shall be afforded the opportunity to prove, at the compliance stage of this proceeding, that Gally was a free rider who willfully and deliberately sought to

evade his union-security obligations and is therefore not entitled to an award of backpay.

ORDER

The National Labor Relations Board orders that the Respondents, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its Local 376, West Hartford, Connecticut, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify bargaining unit employees, when they first seek to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain a nonmember and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Respondents' duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

(b) Causing or attempting to cause Colt Industries to discharge George Gally, or any other employee, for failing to pay union dues pursuant to a union-security clause without first notifying them of their *General Motors* and *Beck* rights, advising them of the amount of their dues delinquency, and affording them a reasonable opportunity to pay the amounts owed.

(c) In any like or related manner restraining or coercing employees in the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify George Gally in writing of his rights under *General Motors* to be and remain a nonmember and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to the Respondents' duties as bargaining agent and to obtain a reduction in dues and fees for such activities. The notice must include sufficient information to enable Gally to intelligently decide whether to object, including the amount by which his fees would be reduced were he to become a *Beck* objector, as well as a description of any internal union procedures for filing objections.

(b) Jointly and severally, make whole George Gally for any loss of wages or other rights and benefits he may have suffered, as a result of their unlawful conduct, in the manner set forth in the remedy section of this decision.

(c) Notify Colt Industries, in writing, with a copy to Gally, that it has no objection to Gally's employment and that it requests that Gally be reinstated.

(d) Notify Gally that it will not cause or attempt to cause Colt Industries to discharge him for nonpayment of dues without first notifying him of his *General Motors*

⁴² *Teamsters Local 251 (Ryder Student Transportation)*, supra, 333 NLRB 1009,1010 fn. 6; *Mavo Leasing*, supra, 322 NLRB at 36 fn. 2.

⁴³ 283 NLRB 1173 (1987).

and *Beck* rights and affording him a reasonable opportunity to pay the amounts owed.

(e) Within 14 days from the date of this Order, remove from its files, and ask Colt Industries to remove from its files, any reference to the discharge of Gally, and within 3 days thereafter notify Gally in writing that this has been done and that the discharge will not be used against him in any way.

(f) Within 14 days after service by the Region, post at Respondent Local 376's business office and meeting hall copies of the attached notice marked "Appendix."⁴⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by Respondent Local 376 and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Local 376 to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Within 14 days after service by the Region, deliver to the Regional Director for Region 31 signed copies of the notice in sufficient numbers to be posted by Colt Industries in all places where notices to employees are customarily posted, if it is willing.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify bargaining unit employees, when we first seek to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain a nonmember and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

WE WILL NOT cause or attempt to cause Colt Industries to discharge George Gally, or any other employee, for failing to pay union dues pursuant to a union-security clause without first notifying them of their *General Motors* and *Beck* rights, advising them of the amount of their dues delinquency, and affording them a reasonable opportunity to pay the amounts owed.

WE WILL NOT in any like or related manner restrain or coerce you in the rights guaranteed you by Section 7 of the Act.

WE WILL notify George Gally in writing of his rights under *General Motors* to be and remain a nonmember and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities. The notice will include sufficient information to enable Gally to intelligently decide whether to object, including the amount by which his fees would be reduced were he to become a *Beck* objector, as well as a description of any internal union procedures for filing objections.

WE WILL, jointly and severally, make whole George Gally for any loss of wages or other rights and benefits he may have suffered, with interest, as a result of our unlawful conduct.

WE WILL notify Colt Industries, in writing, with a copy to Gally, that we have no objection to Gally's employment and that we request that Gally be reinstated.

WE WILL notify Gally that we will not cause or attempt to cause Colt Industries to discharge him for nonpayment of dues without first notifying him of his *General Motors* and *Beck* rights and affording him a reasonable opportunity to pay the amounts owed.

⁴⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of this Order, remove from our files, and ask Colt Industries to remove from its files, any reference to the discharge of Gally, and within 3 days thereafter notify Gally in writing that this has been done and that the discharge will not be used against him in any way.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA AND ITS LOCAL LODGES
NOS. 95 (UNIT #9), 148, 376, 509, 699, 723,
887, 1609, AND 172 (VARIOUS EMPLOYERS)