

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA LOCAL UNION #376  
(Colt's Manufacturing Company, Inc.)**

and

**Case Nos. 34-CB-2631  
34-CB-2632**

**GEORGE H. GALLY, An Individual**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, UAW  
(New York University)**

and

**Case No. 34-CB-3025  
(formerly 2-CB-20730)**

**SOLO J. DOWUONA-HAMMOND, An Individual**

*Thomas Quigley, Esq.*, Counsel for the General Counsel.  
*Michael Nicholson, Esq.* and *Blair Simmons, Esq.*, for the Respondents.  
*W. James Young, Esq.* for the Charging Parties.

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me on December 4, 2007 in Hartford, Connecticut. The Order Further Consolidating Cases, which issued on October 30, 2007, was based upon unfair labor practice charges and amended charges that were filed by George Gally, herein called Gally, an individual, on March 31, 2003<sup>1</sup>, July 16, and August 5 (in Case Nos. 34-CB-2631 and 34-CB-2632), and by Solo Dowuona-Hammond, herein called Hammond, on May 10, 2006 (in Case No. 34-CB-3025). The Consolidated Complaint alleges that Local 7902, Adjuncts Come Together, UAW, herein called Local 7902, has a collective bargaining agreement with New York University, herein called NYU, that contains a union-security provision requiring all unit employees, as a condition of continued employment, to either become or remain members of Local 7902 or International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, herein called UAW or the Respondent, or to pay an Agency Fee to the UAW or Local 7902 in an amount equivalent to the amount uniformly required to be paid as dues and initiation fees by those who choose to become members of the UAW and/or Local 7902. The Consolidated Complaint further alleges that the UAW and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local Union #376, herein called Local 376 or the Respondent, have a collective bargaining agreement with Colt's Manufacturing Company, Inc., herein called Colt, covering certain of Colt's employees, and that this agreement contains a union-security clause

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2003.

requiring all unit employees to become or remain members of the UAW or Local 376. It is also alleged that the UAW, Locals 7902 and Local 376 expend the monies collected pursuant to the union security provisions in their contracts on activities germane to collective-bargaining, contract administration, and grievance adjustment, and on activities not germane to collective-bargaining, contract administration, and grievance adjustment, herein called  
 5 nonrepresentational activities, and that at all times Local 7902, Local 376 and the UAW have maintained a procedure entitled “Agency Fee Payer Objection Administration-Private Sector,” herein called the Procedure, that governs the reduction in dues and fees to nonmember employees who object to the payment of dues and fees for nonrepresentational activities. This  
 10 Procedure requires that objections filed by non-members are valid for one year, and must be renewed annually.

Substantively, (in 34-CB-3025) the Consolidated Complaint alleges that Hammond, who has, or had, been employed as a unit employee at NYU since about May 27, 2004, notified  
 15 Local 7902, by letter dated May 27, 2004, that he objected to the payment of dues and fees for nonrepresentational activities, and on about October 25, 2004, UAW recognized him as an objecting non-member pursuant to the Procedure, for a one year period. However, by letter dated November 16, 2005, the UAW notified Hammond and NYU that it no longer considered him an objecting non-member pursuant to the Procedure because he failed to renew his  
 20 objection, and since that date, it has failed to recognize him as an objecting non-member, and has continued to seek from him full dues and fees as a condition of his continued employment with NYU, in violation of Section 8(b)(1)(A) of the Act. In similar fashion (in 34-CB-2631 and 34-CB-2632) the Consolidated Complaint alleges that at all material times Gally has been a unit employee at Colt and has not been a member of either the UAW or Local 376 and that on about  
 25 February 22, 2002 they recognized him as an objecting non-member pursuant to the Procedure for a one year period. However, by letter dated March 10, 2003, they notified Colt that Gally should no longer be considered an objecting non-member pursuant to the procedure because he had failed to renew his objection. By letter dated March 17, 2003, Gally notified the UAW and Local 376 that he objected to the payment of dues and fees for nonrepresentational activities and that his objection should be valid for three years. The Respondent and Local 376  
 30 responded by letter dated March 7, 2003 informing him that it recognized him as an objecting non-member for a one year period expiring April 1, 2004, and that if he wished to renew his objection beyond that date, he was required to file another objection within the thirty day period prior to April 1, 2004. The Consolidated Complaint alleges that this requirement violates Section  
 35 8(b)(1)(A) of the Act. Respondents, in its Answers, in addition to denying the substantive allegations of the Complaint that the Respondents violated Section 8(b)(1)(A) of the Act by limiting *Beck* objections to a renewable one-year period, defends, *inter alia*, that the allegations relating to both Gally and Hammond are barred by Section 10(b) of the Act.

## 40 Findings of Fact

### I. Jurisdiction

Respondents admits, and I find, that Colt and NYU have each been employers engaged  
 45 in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

### II. Labor Organization Status

The UAW, Local 376 and Local 7902 admit, and I find, that each is a labor organization  
 50 within the meaning of Section 2(5) of the Act.

### III. The Facts

#### A. Issue and Background

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On July 20, 2007, the Board issued an Order Denying Cross Motions for Summary Judgment and Remanding, denying General Counsel’s Motion for Summary Judgment and the Respondent’s Cross-Motion for Summary Judgment, finding that there were material facts in dispute. At issue is the Respondent’s annual renewal policy for *Beck*<sup>2</sup> objectors. The General Counsel and the Charging Parties allege that this policy places an undue burden on the objectors, while the Respondents argue that the one year renewal requirement serves legitimate business purposes, and places a minimal burden on the objectors. The Board stated: “We find that factual disputes exist regarding the extent of the burden on objectors and the legitimacy of the Respondents’ asserted business justification for (1) precluding objectors from asserting fixed periods for their objections (e.g., the 3-year period asserted here), and (2) requiring objectors to renew their objections annually. By litigating this issue, the parties can present specific evidence in support of their claims.”

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Pursuant to the Board’s Order, the issue remanded is a very narrow one: can the Respondents establish a valid business justification for their requirement that objectors renew their objections on an annual basis, and the extent that the annual renewal requirement places on the objectors. The two witnesses herein were Gally, the Charging Party in the Colt case, and Merrill Whitman, the most senior staff member of the UAW’s legal department. Hammond did not testify or appear at the hearing and it is unclear if he is still employed by NYU. Gally’s testimony was not very helpful because he remembered very little of the events herein. That is too surprising since his difficulties with the Respondents began about twenty five years ago and even the immediate situation commenced fifteen years ago. Whitman had an excellent memory and is obviously very capable and intelligent. The difficulty that I had with his testimony was that he constantly answered more than was asked, he could not answer a question succinctly, and he attempted to explain issues that were not asked of him. In addition, the Respondents attempted to present testimony and numerous documents that clearly had no relevance to the issue presented to me by the Board, including testimony of a situation that occurred forty years ago. I rejected this evidence due to the narrow remand of the Board herein. A majority of the relevant information herein was based upon letters to and from the Respondent regarding Gally and Hammond’s *Beck* status.

#### B. Gally

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Gally has been employed by Colt since about 1961, and is a member of the bargaining unit represented by the Respondents. In August 1961 he signed a Union membership card and a dues checkoff authorization card for the Union and remained a Union member until resigning from the Union in 1985. He testified that during the period of his union membership, he never had to sign another membership card, or checkoff authorization card. In 1986, the Respondents commenced a strike against Colt that lasted for approximately four years; Gally honored the Union’s picket line for the first month and returned to work for the balance of the strike. He was fired by Colt at the request of the Union for non-payment of Union dues on April 9, 1991 and was reinstated on October 9, 1992. This situation was remedied by a Supplemental Decision and Order of the Board at 342 NLRB 64 (2004) wherein the Respondents were ordered to make

<sup>2</sup> *Communication Workers of America v. Beck*, 487 U.S. 735 (1988).

him whole in the amount of \$30,773, plus interest.

On November 6, 1992, the Respondents wrote two letters to Gally briefly explaining *Beck*, stating that although he had failed to file a *Beck* objection the Union was unilaterally treating him as a non-member objector, and stating that they determined the chargeable percentage of dues as 82.40%, and that, on that basis, he was obligated to pay the sum of \$22.64 monthly. The other letter of the same date again states that it is treating him as a non-Union objector, and explains the process for challenging the UAW's calculation of chargeable expenses. The letter concludes by saying that the date of expiration (DOE) of his objector status was October 6, 1993, but that he can renew his objector status for another year by notifying the Union within 30 days of that date. On that same date, the UAW notified Colt of Gally's non-member objector status and that if they have a dues checkoff authorization from him they should deduct the reduced amount from his pay for the next twelve month period. By letter dated June 1, 1994, the UAW wrote to Gally, notifying him of the new chargeable percentage and reminding him that his DOE was October 6, 1994, and that he could renew his objection for an additional year by notification to the UAW within the 30 days prior to that date. By letter of the same date to Colt, the UAW notified Colt of the new chargeable percentage. On October 17, 1996 the UAW notified Gally that they received his *Beck* objection, the percentage of chargeable expenses, of his right to challenge the percentage charged, that his DOE was October 11, 1997, and that a renewal of the objection for an additional year must be received within 30 days of that date. On the same day, a letter was sent to Colt, notifying them of Gally's objector status, and the chargeable expense percentage. On June 25, 1997 the UAW wrote to Gally notifying him of the revised chargeable expense percentage, and again notified him that in order to renew his objector status for an additional year, his objection must be received by the UAW within 30 days of his DOE, October 11, 1997. On the same day the UAW wrote to Colt saying that Gally was an objecting non-member, and informed Colt of the new chargeable expense percentage.

By letter dated February 19, 2002 Gally wrote to the Respondents invoking his *Beck* rights, and by letter dated February 25, 2002, the Respondents acknowledged receipt of the letter and stated that any renewal for an additional year would have to be received no later than 30 days prior to the DOE, March 1, 2003. On the same date Respondents notified Colt of his *Beck* status. By letter to Gally, dated May 30, 2002, Respondents stated that it had previously received and acted on his *Beck* objection and notified him of the revised chargeable expense percentage. On August 22, 2002 Gally wrote to the Respondents, again, invoking his *Beck* rights, and by letter dated August 26, 2002 Respondents stated that he was currently a *Beck* objector and that his renewal was premature; that he should renew his objection for an additional year within 30 days of his DOE, then March 1, 2003. On the same date, the Respondents notified Colt of Gally's objector status, and the new chargeable expense percentage. On about March 17 Gally wrote to the Respondents stating that he wanted to renew his objection "for the next 3 years." By letter dated March 27 Respondents replied: "Annual renewal of your *Beck* objection is still required." In another letter on the same date, the Respondents notified Gally of the new chargeable expense percentage, again told him how this figure can be challenged and that the DOE was April 1, 2004 and any renewal request for an additional year must be received within 30 days of that date. On the same date, Respondents notified Colt of Gally's renewed objection. Although there, apparently, have been no further *Beck* letters from Gally to the Respondents, he has continued to be treated as a *Beck* objector.

### C. Hammond

There is substantially less evidence in the record regarding Hammond. By letter dated May 27, 2004, Hammond wrote to Local 7902 resigning from Local 7902 and invoking his *Beck*

rights. The UAW, by letter to Hammond dated November 1, 2004, stated that it received his *Beck* objection and that it notified NYU of the percentage of the dues that was to be deducted from his pay. The letter concludes that in order to renew his objection for another year, the objection must be received by the UAW within 30 days prior to his DOE, November 1, 2005, and  
 5 by letter dated October 29, 2004 the UAW notified NYU of Hammond's objector status, together with the prevailing chargeable expense percentage. By letter dated June 27, 2005 the UAW informed Hammond about the updated chargeable expense percentage, his right to challenge it, and the fact that in order to renew his objection for an additional year, he must do so in writing within the 30 day period prior to his DOE, November 1, 2005. By letter to NYU dated November  
 10 16, 2005, the UAW stated, *inter alia*:

On 10/25/2004, Solo Dowuona-Hammond, a nonmember of the UAW, filed or was deemed to have filed an objection with the UAW pursuant to *Beck v. CWA*. Under UAW's objections procedures, such objections are valid for one year, but may be  
 15 annually renewed.

Solo Dowuona-Hammond has **not** renewed the above reference objection. Accordingly, effective **immediately**, please **increase** the amount of moneys checked off for union fees payable by the above-referenced non-UAW member to **100 percent** of the amount  
 20 of dues payable by the UAW members. [Emphasis supplied]

In response, Hammond wrote to NYU on December 2, 2005 to disregard the Respondent's request that 100% of the dues be deducted from his pay. He also stated:

Since the UAW failed to respond to my letter of resignation, in which I invoked my **Beck** right, and failed to inform me of Beck's annual renewal requirement, it is disingenuous, at best, and downright dishonest, at worst, for the UAW to say that I failed to meet an annual renewal requirement for **Beck**. [Emphasis supplied]  
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By letter dated January 24, 2006 the Respondents notified Hammond that it was in receipt of his Beck objection that it would treat him as such, that his new DOE was January 1, 2007, and that to renew his objection for an additional year he had to do so within 30 days of his DOE. On the same date, Respondents also informed NYU that Hammond was a *Beck* objector and that they should only deduct the specified percentage from his wages for the next twelve months. In July  
 30 2006 the Respondent wrote to Hammond saying that they "...previously received and acted on your objection as a non-UAW member pursuant to *Beck v. CWA*." The letter refers to the existing chargeable expense percentage and again concludes that he may renew his objection for an additional year by transmitting it to the Respondent within 30 days immediately prior to his present DOE, January 1, 2007. Finally, on January 17, 2007, the Respondent wrote to NYU,  
 35 *inter alia*:  
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On 12/7/2005, Solo Dowuona-Hammond, a nonmember of the UAW, filed or was deemed to have filed an objection with the UAW pursuant to **Beck v. CWA**. Under UAW's objection procedures, such objections are valid for one year, but may be annually  
 45 renewed.

Solo Dowuona-Hammond has **not** renewed the above referenced objection. Accordingly, effective **immediately**, please **increase** the amount of moneys checked-off for union fees payable by the above-referenced non-UAW member to **100 percent** of the  
 50 amount of dues payable by the UAW members. [Emphasis supplied]

Received in evidence was a payroll statement from NYU from January 2007 through June 29,

2007, stating that Hammond’s total earnings at NYU for that period were \$2,624.

#### **D. Respondent’s Procedure with *Beck* Objectors**

5 Respondents’ procedures in dealing with *Beck* objectors has evolved over the years since shortly after *Beck* was decided in 1988. As can be seen in Sections B and C above, *Beck* objections produce a large amount of letter writing by the UAW, and a lesser amount by the objectors. The procedure begins when the individual notifies the UAW that he/she wishes to become a *Beck* objector. The Respondents, in their brief, stress the ease and lack of  
10 requirements for the objections: the letter can be sent regular mail or can be dropped off at the union office, and it can be sent at any time, there is no “window period” for filing these objections. Upon receipt of the objection, the UAW writes to the objector, confirming receipt of the objection and stating that his/her employer would be notified of the objection, as well as the percentage of the regular dues to be paid by the objectors. The letter then explains how the  
15 UAW arrived at the Charged Amount and the objector’s right to challenge this amount. The letter also states that a report is issued yearly to the objectors, usually about May 15, explaining the calculations for the following year. The letter concludes by saying that the objection expires on the date listed at the top of the letter (the DOE) and that he/she may renew the objection “for another year” by notifying the Respondent, in writing, within 30 days of the DOE. The DOE is  
20 presently calculated as the first day of the month twelve months after the objection is received. At the same time that the Respondent sends this letter to the objector, it also send a letter to the objector’s employer stating that the employee is a *Beck* objector and, if the employee has executed a dues checkoff authorization form, the employer is to deduct only the chargeable percentage of the regular dues from the employee’s earnings; a copy of this letter is also mailed  
25 to the objector. Further, beginning in October 2007, the Respondent began sending reminder letters to objectors fifteen days prior to their DOE.

#### **E. Respondents’ Defenses**

30 Respondents defend that past Board actions support the legality of its one year renewal requirement. On November 15, 1988, the General Counsel of the Board issued *Beck* Guidelines to all Board offices. One portion of these guidelines states: “...a union can require nonmembers to file new objections, as discussed below, each year.” In addition, the UAW, together with a number of its local unions, including Local 376, entered into a settlement agreement with the  
35 Board in 1992 wherein the Respondents agreed to reimburse fee payments to certain *Beck* objectors, including Gally, and to rewrite certain of its *Beck* notices. Additionally, the Respondents defend that, in 2001, during testimony before the Committee on Education and the Workforce of the United States House of Representative on the subject of *Beck*, Arthur Rosenfeld, General Counsel of the Board, stated: “Generally, a union may require that  
40 objections be sent to the union during a specified annual “window period.”

Finally, the Respondents defend that its yearly renewal requirement is needed because of the high turnover of the employees that it represents. Whitman testified that in 1992, the UAW represented in excess of one million employees, a large percentage of whom were employed by  
45 employers in its “core industries,” such as Ford, General Motors and Chrysler. The employee turnover rate was low for these employers because of the high pay structure and benefits in this industry. However, due to the layoffs, retirement and buy-out programs that have occurred over the last few years in this industry, and related industries, the UAW now represents fewer employees in these industries, and has been successful in organizing service industries,  
50 particularly, casinos, hospitals and universities. He testified that due to the lower pay scales, these industries have a higher turnover rate of employees than the automobile and related industries. As a result, it is more difficult to obtain timely data about the employees of these

employers than it was years ago when the core industries were at full employment, and, as a consequence, more difficult to learn if they are still employed. The lack of complete records in these new industries makes it difficult to keep track of these employees. It would be easier to track and locate them, the Respondents argue, if the employees were required to notify them on a yearly basis that they wished to exercise their *Beck* rights.

Respondents also defends that the allegations involving both Gally and Hammond are barred by Section 10(b) of the Act. As can be seen in Sections B and C above, the large number of letters received by Gally and Hammond, always stated: “You may renew your objection in writing for another year within 30 days immediately prior to your DOE...” [Emphasis supplied]. After Gally wrote that he wanted his objection to be valid for a three year period, the UAW, by letter dated March 27, 2003, wrote him: “We have your letter of March 20, 2003. Annual renewal of your *Beck* objection is still required.” By letter dated March 27, 2003, the Respondent wrote Gally that it received his *Beck* objection and that his new DOE was April 1, 2004.<sup>3</sup> Gally’s unfair labor practice charges in this matter were filed March 31, July 16, and August 5, 2003. In response to Hammond’s letter to NYU dated December 2, 2005, the Respondent sent Hammond its form letter, dated January 26, 2006, saying, *inter alia*, that it accepted his objection, his DOE was January 1, 2007, and that he could renew his objection for another year. Hammond’s unfair labor practice charge was filed on May 10, 2006. Counsel for the Respondent in his brief, argues that Gally has been aware of the one year renewal requirement since, as early as, 1992, and Hammond was notified of the one year requirement in the UAW’s November 1, 2004 letter, both outside the Board’s 10(b) period.

#### IV. Analysis

Two of the Respondents’ defenses are clearly without merit. The fact that the Board’s *Beck* guidelines issued twenty years ago approved of a yearly renewal requirement, and that General Counsel Rosenfeld testified seven years ago approving of one year renewal requirements, does not constitute Board law, and are not binding on me, the Board, or the Courts. *Kysor Cadillac*, 307 NLRB 598, 604 at fn. 4 (1992); *Glendale Associates, Ltd.*, 335 NLRB 27, 34 (2001). In addition, Respondent’s Section 10(b) defense also must fall. Respondent contends that because Gally has known of the one year renewal requirement since about 1992, and Hammond since 2004, both outside the Section 10(b) period, the Complaint must be dismissed. This argument fails for two reasons. While it is true that Gally was initially informed of the one year renewal requirement in, or prior to 1992, that one year renewal requirement has been repeated, almost yearly, in the letters that the UAW has sent Gally. The final paragraph of each of these letters stated that he could renew his objection for another year by requesting the renewal in writing within 30 days of his DOE. The last such letter to Gally is dated March 27, four days prior to his first unfair labor practice charge and four and a half months before his final unfair labor practice charge. A similar situation is true for Hammond: Respondent’s final letter notifying him of the one year renewal period is dated January 26, 2006 and his unfair labor practice charge was filed May 10, 2006, clearly within the Section 10(b) period. Respondent’s Section 10(b) defense is therefore dismissed.

Although the Board has not yet ruled upon the legality of yearly renewal requirements of *Beck* objections<sup>4</sup>, there are a number of court decisions that go both ways, and there is, at least,

<sup>3</sup> The Respondent treated Gally’s three year request as a one year objection.

<sup>4</sup> Counsel for Respondent, in his brief, states: “In its *California Saw & Knife Work* decision [320 NLRB 224, 236, fn. 62] the Board noted the General Counsel’s position that an annual objection procedure is lawful with apparent approval.” However, as stated by counsel for the

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one decision from an administrative law judge on the subject. In *Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6<sup>th</sup> Cir. 1987) the Court found this requirement “not...unreasonable” and lawful. Similarly, *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1381-1382 (D.C. Cir 1995), citing *Tierney* and *International Association of Machinists v. Street*, 367 U.S. 740, 774 (1961), stated: “The annual renewal requirement is permissible in light of the Supreme Court’s instruction that ‘dissent is not to be presumed- it must affirmatively be made known to the union by the dissenting employee.’” On the other hand, three courts have found the annual renewal requirement to be unlawful. In *Shea v. International Association of Machinists*, 154 F.3d 508, 515 (5<sup>th</sup> Cir 1998), involving the Railway Labor Act, the Court stated:

The current procedure is cumbersome to both the union and the objecting employees because it requires annual computer entries. If the IAM recognized continuing objections made expressly and in writing, the employee would notify the union only once and neither the union nor the individual would be bothered with annual database entries.

The IAM has not proffered any legitimate reason why an annual written objection requirement is necessary when the employee has previously furnished (and not withdrawn) a continuing written objection. It seems to us that the unduly cumbersome annual objection requirement is designed to prevent employees from exercising their constitutionally-based right of objection, and serves only to further the illegitimate interest of the IAM in collecting full dues from nonmembers who would not willingly pay more than the portion allocable to activities germane to collective bargaining. Certainly the procedure that least interferes with an employee’s exercise of his First Amendment rights is the procedure by which an employee can object in writing on a continuing basis...If the IAM could bring forth a legitimate reason why written objections must be annually renewed and cannot be continuing, then perhaps we would have to evaluate whether the infringement is reasonably necessary. But in the absence of such a reason, we hold that the annual written objection procedure is an unnecessary and arbitrary interference with the employees’ exercise of their First Amendment rights.

In *Lutz v. International Association of Machinists*, 121 F. Supp.2d 498, 506 (U.S. District Court, E.D. Virginia 2000), the Court stated:

...the annual objection requirement imposes a burden on the First Amendment rights of nonmembers, and, yet, the IAM has not offered *any* legitimate reason for such a requirement...As the union conceded at oral argument, what is really at stake here is whether the union can collect more money as a benefit of the decision maker’s inertia. In other words, it is the IAM’s hope that objecting nonmembers will either forget or overlook the annual objection requirement, or will reconsider their objection on the merits, thereby enabling the IAM to collect greater funds from nonmembers.

In sum, the annual objection requirement fails First Amendment scrutiny because the requirement is without a valid justification and imposes an undue burden that creates a risk that funds “will be used to finance ideological activities unrelated to collective bargaining.” [citing *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 305 (1986)]

In *Seidemann v. Bowen*, 499 F.3d 119, 125 (2d Cir. 2007), after discussing *Abrams*, *Tierney*

Charging Parties in his brief, the Board merely said in that case that the requirement of annual *Beck* objections was not alleged to be unlawful in that matter.

and Shea, the Court stated:

5 We are persuaded by the Fifth Circuit’s analysis in *Shea*, which is more in line with this  
 Circuit’s jurisprudence regarding agency fee procedures and our reading of Supreme  
 Court precedent. Although the Supreme Court in *Street* [supra], placed the burden of  
 making an initial objection on the employee, nothing in *Street* or the subsequent  
 10 decisions of the Supreme Court suggest that merely because an employee must initially  
 make his objection known, a union may thereafter refuse to accept a dissenter’s notice  
 that his objection is continuing...The fact that employees have the responsibility of  
 making an initial objection does not absolve unions of their obligation to ensure that  
 objectors’ First Amendment rights are not burdened.

15 Here, PSC’s annual objection requirement burdens employees exercising their  
 constitutionally protected right to object, and the union has proffered no legitimate need  
 for disallowing continuing objections...We hold the annual objection requirement  
 imposed by PSC in this case is an unnecessary burden on employees exercise of First  
 Amendment rights.

20 Finally, on May 30, 2006, Administrative Law Judge William Kocol issued a Decision in *General  
 Truck Drivers, Local No. 952 (Albertson’s)*- JD(SF)-30-60<sup>5</sup>, wherein he found the annual  
 renewal requirement unlawful, stating:

25 The General Counsel and the three Charging Parties argue that such a requirement  
 [annual renewal of *Beck* objections] is unlawful because it burdens the rights of  
 employees who wish to continue to object to paying full membership dues. To be sure,  
 the requirement creates an additional effort to maintain objector status. Moreover, the  
 Union is unable to provide a sound reason justifying this encumbrance. In the absence  
 of such an explanation, it appears that this restriction is arbitrary and designed only to  
 discourage the exercise of a right protected by the Act. Moreover, it seems that if  
 30 employees have an unencumbered right to resign from membership, so too should they  
 have an unencumbered right to file *Beck* objections.

35 Pursuant to the Board’s Order dated July 20, 2007, together with the court decisions  
 cited above, the issues that need be examined are the extent that the burden of filing yearly  
*Beck* renewal objections has on the objectors and whether the Respondents can establish a  
 valid or legitimate business reason that justifies the yearly renewal requirement. Of course it is a  
 burden for the objectors to write a yearly letter to the Respondents, or to any union, renewing  
 their *Beck* objection, although, in the instant matter, it cannot be characterized as either onerous  
 or overly burdensome. It cannot be said that the Respondents keep the objectors in the dark as  
 40 to their renewal date hoping for a “gotcha” moment that requires the objectors to pay regular  
 dues for the next twelve months. Rather, the Respondents operate a system that keeps the  
 objectors well informed of the expiration date of their objection. When the Respondents initially  
 respond to the objector, they are notified of their objection date, as they are when they receive a  
 copy of the letter notifying their employer of the *Beck* objection. Sometime in about May or June  
 45 they are notified of the revised chargeable percentage, and that letter, as well, has their DOE.  
 Further, since 2007 the Respondent have notified objectors fifteen days prior to the expiration of  
 their objection and, finally, even if they forget to renew their objection, when they receive a copy  
 of the letter to their employer to charge the former objector the regular dues, they can

50 <sup>5</sup> After the filing of exceptions, the parties entered into a settlement agreement which was  
 approved by the Board, so this matter never generated a Board decision.

immediately renew their objection as there is no “window period.” I therefore find that, although there is a burden on the objectors in filing annual renewals of their *Beck* objection, because of the numerous reminders that the UAW sends to them, this burden is insignificant.

5           The Respondents don’t do as well, however, in establishing a valid business purpose  
 justifying the annual renewal requirement. Their rationale for the rule appears to be principally  
 record keeping. Whitman testified that, in the past, their core industries provided a long term  
 10           stable work force because of the high pay and substantial benefits. However, at the present  
 time, a large number of the Respondent’s members are employed in service industries, casinos,  
 hospitals and university, which have a higher rate of employee turnover. Because of employees  
 entering and leaving covered employment at a higher rate than in the past, it is more difficult to  
 track the names and addresses of the covered employees and to determine their employment  
 status. By requiring *Beck* objectors to renew their objection on a yearly basis, this argument  
 15           goes, the Respondents are better able to keep track of who they represent and where they live,  
 although it is unclear if, in this defense, the Respondents are referring to all covered employees,  
 or are only referring to the ability to track its *Beck* objectors. Either way, this argument must fall  
 for a number of reasons. In about 1992, the Respondent had approximately one million  
 members; at the present time that number is down to about six hundred thousand. Whitman  
 testified that, at the present time, they have about three hundred *Beck* objectors, certainly a  
 20           small percentage of their total members. It is unclear to me why it is so important to require  
 yearly renewals in order to keep track of these *Beck* objectors and not the other 99.9% of their  
 members. Further, the Respondents do not require yearly renewals of union membership cards,  
 dues authorization checkoff cards or notice of resignation from the union. Yearly renewals are  
 only required of *Beck* objectors, and the Respondents have not satisfactorily explained this  
 25           inconsistency. I therefore find that the Respondents have not established a valid business  
 purpose justifying the annual renewal requirement, and find that it therefore violates Section  
 8(b)(1)(A) of the Act.

### Conclusions of Law

30           1. Colt and NYU have each been employers engaged in commerce within the meaning  
 of Section 2(2), (6) and (7) of the Act.

35           2. The UAW, Local 376 and Local 7902 are each labor organizations within the meaning  
 of Section 2(5) of the Act.

            3. By requiring its *Beck* objectors to renew their objection yearly, the Respondents  
 violated Section 8(b)(1)(A) of the Act.

### The Remedy

40           Having found that the Respondents engaged in certain unfair labor practices, I  
 recommend that it be ordered to cease and desist from engaging in these activities, and that it  
 be ordered to take certain affirmative action designed to effectuate the policies of the Act. In that  
 45           regard, I shall order that the Respondents rescind their requirement that *Beck* objectors renew  
 their objection yearly. I shall also order Respondent to notify its existing *Beck* objectors, in  
 writing, that they are not required to renew their objection yearly, and to notify its members of  
 the change in the next issue of Solidarity that is mailed to its members.

50           On these findings of fact and conclusions of law and on the entire record, I issue the



**APPENDIX**

**NOTICE TO 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 Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

**WE WILL NOT** require the bargaining unit employees whom we represent to file annual objections to paying full membership dues and **WE WILL NOT** in any like or related manner restrain or coerce employees in the exercise of their Section 7 rights.

**WE WILL** notify all of our present Beck objectors, in writing, that they are no longer required to file annual objections to the payment of the full union dues, and **WE WILL** notify all bargaining unit employees whom we represent, in our next issue of Solidarity, that they are not required to file annual objections to paying full membership dues.

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW**

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 376**

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

280 Trumbull Street, 21st Floor  
Hartford, Connecticut 06103-3503  
Hours: 8:30 a.m. to 5 p.m.  
860-240-3522.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.