

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 29, 2003

TO : Wayne Gold, Regional Director
Albert W. Palewicz, Regional Attorney
Steven L. Shuster, Assistant to the Regional Director
Region 5

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: United Government Security Officers of America
Local 80 (MVM, Inc.)
Case 5-CB-9447 536-2554-3100

This Section 8(b)(1)(A) case was submitted for advice as to whether the Union violated its duty of fair representation by failing to include in its initial Beck¹ notice the amount of full dues and the percentage reduction that objecting members would receive. We conclude that this information is essential to an employee's ability to decide on an informed basis whether to object, and that requiring unions to provide this information in their initial notices is not overly burdensome. Therefore, complaint should issue, absent settlement, to put to the Board the issue of whether the Union violated its duty of fair representation by failing, in its initial Beck notice, to inform employees of the full amount of dues and the percentage by which that amount would be reduced for objecting members.

FACTS

The Charging Party² works as a security officer at a Federal Court building in the District of Columbia, a jurisdiction where union security clauses are lawful. The Charging Party has worked at the courthouse since July 1994 for a series of security contractors. The current security contractor, MVM Inc., became the employer in October 2002, when it hired all the prior contractor's employees and became party to a collective-bargaining agreement with the

¹ Communication Workers of America v. Beck, 487 U.S. 735, 762-63 (1988).

² The charge was submitted on behalf of Vernon Richardson and several of his co-workers. Only Mr. Richardson submitted evidence. The complaint should cover Mr. Richardson and similarly situated employees of MVM.

Charged Party (United Government Security Officers of America, Local 80 or the Union).

In November 2002, Vernon Richardson, who has never been a member of the Union or made any payment to the Union pursuant to the union security clause, was given a "New Member Notice" by the Union. The notice informs employees of their right to become or remain a "nonmember"³ and their right to make a Beck objection. The notice did not include the amount of dues⁴ or the percentage reduction in total dues that the employee would receive if he should choose to object. The instant charge was filed without any Beck objection having been registered by the Charging Party (or apparently by any other employee).

ACTION

We conclude that, absent settlement, complaint should issue to put to the Board the issue of whether the Union violated its duty of fair representation by failing, in its initial Beck notice, to inform employees of the full amount of dues and the percentage by which that amount would be reduced for objecting members.

In CWA v. Beck, the Supreme Court held that under Section 8(a)(3), unions are entitled to collect from objecting employees only those fees and dues necessary to perform representational duties.⁵ In California Saw,⁶ the Board found that when or before a union seeks to collect dues and fees under a union security clause, it must inform employees of their right to be or remain nonmembers and that nonmembers have the right:

- (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities;
- (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and
- (3)

³ NLRB v. General Motors, 373 U.S. 734 (1963).

⁴ The Union contends that the space for the amount of dues was deliberately left blank, and that the actual dues rate is inserted only if an employee opts to become a Beck objector.

⁵ Beck, 487 U.S. at 762-63.

⁶ California Saw & Knife Works, 320 NLRB 224 (1995).

to be apprised of any internal union procedures for filing objections.⁷

The Board went on to hold that if an employee chooses to object, the union must then apprise the employee of "the percentage of the reduction, the basis for the calculation, and the right to challenge these figures."⁸ Thus, under current Board law, an initial Beck notice need not provide the percentage of a union's expenditures that is spent on non-representational matters.⁹ Rather, such information is required only if an employee makes a Beck objection.

In denying enforcement to Dyncorp, the D.C. Circuit, in Penrod v. NLRB, held that an initial Beck notice must apprise potential objectors of the percentage of union dues chargeable to them in order for potential objectors to gauge the propriety of a union's fee.¹⁰ The D.C. Circuit found that case to be "squarely controlled by" the Supreme Court's decision in Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986), where the Court said, in a public sector case, that: "[b]asic considerations of fairness . . . dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee."

While it is arguable that the D.C. Circuit's view that Hudson requires the percentage information to be submitted to potential Beck objectors, it is also arguable that the Supreme Court's decision in Hudson applies only to employees who are already Beck objectors in order to allow them to determine whether to challenge the union's apportionment of chargeable and nonchargeable expenditures.¹¹ We agree with the result in Penrod, however, that this percentage information should be

⁷ Id. at 233.

⁸ Id.

⁹ See Teamsters Local 166 (Dyncorp Support Services), 327 NLRB 950, 952 (1999), enf. denied sub nom. Penrod v. NLRB, 203 F.3d 41 (D.C. Cir. 2000); Grocery Employees, Local 738 (E.J. Brach), 324 NLRB 1193, 1193-94 (1997); Teamsters Local 688 (Jefferson Smurfit Corp.), 326 NLRB 878, 880, n. 5 (1998).

¹⁰ Penrod v. NLRB, 203 F.3d at 48. See also Abrams v. Communication Workers of America, 59 F.3d 1373 (D.C. Cir. 1995);

¹¹ See dissent in Abrams, 59 F.3d at 1383-84.

provided in the initial notice, because it is essential to an employee's informed decision as to whether to become a Beck objector. Just as the Supreme Court found this information crucial to an informed evaluation of the apportionment of chargeable and nonchargeable expenses, we believe an employee also needs to know the full dues as well as the amount of dues expense he would save by becoming a Beck objector in order to make an informed decision whether to make the Beck objection.

When California Saw issued in 1995, the concern that caused the Board not to require disclosure of the percentage reduction in dues in an initial Beck notice was that calculating this percentage for inclusion in an initial notice would likely be an expensive and time-consuming burden upon unions.¹² However, the burdensomeness of such a requirement no longer appears to be a significant concern. Since California Saw, many major national and international unions have developed Beck systems and thus have percentage information already available. A review of Board cases, ALJ decisions and district court duty of fair representation cases revealed that at least 26 national and international unions, collectively representing well over 10 million employees, have Beck systems in place.¹³ We also note that local unions are entitled to a "local presumption" that the percentage of a local's expenditures chargeable to objectors is at least as great as the chargeable percentage of its parent union.¹⁴ Accordingly, under current Board law local unions can rely on their International's Beck system to comply with their duty of fair representation obligation.

In light of the increased prevalence of Beck systems among unions, particularly international Unions who can supply the necessary Beck information to their local affiliates through the use of the local presumption, the importance of this information for making informed decisions as to whether to become a Beck objector now appears to outweigh any burden associated with compiling the percentage information. Accordingly, we believe the

¹² See Dyncorp Support Services, 327 NLRB at 952, where the Board explained that its concern in California Saw was that calculating the percentage by which dues and fees are reduced for objectors "can be an expensive and timeconsuming undertaking."

¹³ See attached appendix listing national and international unions with established Beck systems.

¹⁴ California Saw, 320 NLRB at 242.

Board should reconsider and reverse its prior policy and require that unions inform employees, in initial Beck notices, of the percentage reduction in dues that an objecting employee would receive. Therefore, the Region should issue a Section 8(b)(1)(A) complaint, absent settlement, alleging as unlawful the Union's failure to provide this information in its initial Beck notice.¹⁵

The Region should also allege in the complaint the Union's failure to indicate the total amount of dues to which the percentage applies. This information, although presumably normally provided by unions, is important in order to allow a potential Beck objector to evaluate his potential savings in absolute terms.

B.J.K.

¹⁵ It would appear given the circumstances of this case, a stipulated record to the Board would be the most effective way to get this issue decided.

International and National Unions with Beck Systems

| <u>Name of Union</u> | <u>Membership</u> |
|---|-------------------|
| International Union, United Automobile, Aerospace and Agricultural Implement Workers of America [UAW] | (728,510) |
| International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB) | (77,643) |
| United Brotherhood of Carpenters and Joiners of America [UBC] | (515,986) |
| Communications Workers of America [CWA] | (490,621) |
| International Brotherhood of Electrical Workers [IBEW] | (718,742) |
| International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers [IUE] | (112,331) |
| United Food and Commercial Workers Intl Union [UFCW] | (1,391,399) |
| Graphic Communications International Union [GCIU] | (141,874) |
| Intl Assn of Bridge, Structural, Ornamental and Reinforcing Iron Workers [BSORIW] | (126,004) |
| Laborers' International Union of North America [LIUNA] | (774,696) |
| Intl Longshoremen's Association [ILA] | (47,000) |
| Intl Assn of Machinists and Aerospace Workers [IAMAW] | (737,510) |
| National Maritime Union [NMU] | (not available) |
| American Federation of Musicians of the US and Canada [AFM] | (110,000) |
| Office and Professional Employees International Union [OPEIU] | (117,997) |
| International Union of Operating Engineers [IUOE] | (372,527) |
| International Union of Painters and Allied Trades [IUPAT] | (133,000) |
| National Production Workers Union [NPWU] | (4,850) |
| Screen Actors Guild [SAG] | (76,309) |
| Service Employees International Union [SEIU] | (1,400,000) |
| Sheet Metal Workers Intl Assn [SMW] | (142,500) |
| United Steelworkers of America [USWA] | (690,000) |
| International Brotherhood of Teamsters [IBT] | (1,400,700) |
| American Federation of Television and Radio Artists [AFTRA] | (67,251) |
| Intl Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the US and Canada [IATSE] | (101,000) |
| Transport Workers Union of America [TWU] | (109,000) |