

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

Advice Memorandum

DATE: August 21, 2008

TO : Wayne Gold, Regional Director
Region 5

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

SUBJECT: International Union, Security, Police and
Fire Professionals (Frontier Systems Integrators)
Case 5-CB-10403

This Section 8(b)(1)(A) case was submitted for advice on whether the Union was required to provide a Beck objector with an audit of its allocation of representational and nonrepresentational expenses, and whether the Union unlawfully threatened to have the Employer discharge the objector where the Union failed to provide the above audit information and the Union's Beck procedure required annual renewal of Beck objector status.

We conclude that the Union was not required to provide an audit of its representational and nonrepresentational expenses, and the Union did not unlawfully threatened the Beck objector because the Union had fully complied with its obligations under Beck and Philadelphia Sheraton at the time.¹ We further conclude that the Union unlawful required an annual renewal of objector status. [*FOIA Exemptions 2 and 5*

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FACTS

The Union is signatory to a bargaining agreement containing a union-security clause.² In December 2007, the

¹ Hotel Employees Local 568 (Philadelphia Sheraton Corp.), 136 NLRB 888 (1962), end's sub nom., NLRB v. Hotel, Motel & Club Employees Union, Local 568, 320 F.2d 254 (3d Cir. 1963).

² Prior Section 8(b)(1)(A) charges were filed against the Union for failing to provide Beck notices and for withholding Union dues from employees who had not signed check off authorizations. The Union entered into an informal settlement agreement providing for the refunding of dues and fees and the furnishing of requisite notices. The Region has closed that case on compliance.

Charging Party employee notified the Union that he wished to become a service fee payer. The employee asked the Union to provide him with a detailed accounting of its representational costs and its challenge procedure. In January 2008, the Union sent the employee a list of the major categories of the Union's expenses for the fiscal year ending March 2006, broken down into representational and nonrepresentational amounts in dollar figures, calculating the percentage of nonrepresentational expenditures to be 86.36 percent. The Union also provided its challenge procedure and a service fee check off authorization form for the employee to sign and return.

On January 14, the employee asked the Union to provide him with the audit report for the fiscal year ending in March 2006 and a period of time for him to review and respond to the audit. The employee also asked the Union to bill him monthly for his service fees and to place any funds received from him into escrow.

On March 28, the Union sent the employee an "Obligation Letter" stating that he had not paid any dues or fees as required by the bargaining agreement. The letter noted that full dues were 2½ hours of base pay per month and that the service fee was 86.36 percent of dues as calculated by an independent certified public accountant. The letter warned that failure to comply may result in removal from work. The employee did not respond.

On April 18, the Union sent the employee a "Final Notice of Obligation" letter setting forth the amount of regular dues and service fees dues owed for the two months of March and April. The letter advised the employee that the Union would request his discharge if he refused to make requisite payments. Although this letter purported to list the dues or service fees owed for two months, it incorrectly listed as owed the amounts for only one month. On May 22, the Union sent the employee a "Corrected Letter" accurately summarizing the amounts owed for two months and repeated the threat of discharge.

The employee did not make any payments; the Union did not request his discharge. Instead, on June 18 the Union sent the employee a letter advising him where to mail his monthly payments if he chose not to sign the service fee check off authorization. Finally, the letter stated that the Union was relieving the employee of any obligation to make service fee payments up until the date of the letter, and that the Union would take no action against the employee's employment for his failure to make those prior payments.

ACTION

The Union was not required to provide the objector with an audit of its representational and nonrepresentational expenses, and the Union did not unlawfully threaten to discharge the Beck objector because the Union had fully complied with its obligations under Beck and Philadelphia Sheraton at the time. The Unions unlawful required an annual renewal of objector status. [*FOIA Exemptions 2 and 5*

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After a Beck objection, a union must provide objectors with a list of the major categories of its expenditures, the amount the union spends in each category, a declaration of which expenditures are chargeable and which are not, and the percentage figures for chargeable versus nonchargeable expenditures.³ We have previously concluded that this obligation does not include providing an audit of the union's breakdown of chargeable and nonchargeable expenditures.⁴

In California Saw, the Board held that the union violated Section 8(b)(1)(A) by threatening to seek the discharge of objectors before providing them with a dues reduction or acknowledging their objector status.⁵ In its January 2008 letters to the employee, the Union acknowledged the employee's objector status, provided him with a dues deduction, and supplied all requisite financial information. The Union thus had fully complied with Beck when it threatened the employee with discharge.

Under Philadelphia Sheraton, before a union may seek the discharge of an employee for failure to tender dues and fees, it must at a minimum give the employee reasonable notice of the delinquency, including among other things an accurate statement of the precise amount and months for

³ Teamsters Local No. 579 (Chambers & Owen, Inc.), 350 NLRB No. 87 (2007). A union must also provide the identity of and similar information concerning affiliates with which the union shares income from dues and fees.

⁴ See UFCW Local 101 (Macy's West, Inc.), 20-CB-12253, Advice Memorandum dated June 22, 2005; United Steel, Paper and Forestry Workers, Local 9999 (Alcoa Engineering), 4-CB-9841, Advice Memorandum dated October 10, 2007.

⁵ California Saw and Knife Works, 320 NLRB 224, 248-49 (1995), end. 133 F.3d 1012 (7th Cir. 1998), cert. denied 525 U.S. 813 (1998).

which dues are owed and the method used to compute this amount.⁶ This requirement applies equally to union threats to cause discharge.⁷

The Union's April 18 letter initially threatening discharge incorrectly totaled the employee's two month service fee arrearage. However, the Union's second "Corrected Letter" contained an accurate total arrearage with a repeated threat of discharge. We therefore conclude that the Union did not unlawfully threaten discharge without providing an accurate statement of dues arrearage.⁸

In sum, the Region should dismiss the inadequate disclosure and threat allegations, [FOIA Exemptions 2 and 5

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B.J.K.

⁶ Teamsters Local 122 (August A. Busch), 203 NLRB 1041-42 (1973), end. 502 F.2d 1160 (1st Cir. 1974) (table).

⁷ See, e.g., Machinists Local 9 (Borg-Warner Corp.), 237 NLRB 1278-79 (1978).

⁸ The Union's discharge threat was not rendered unlawful because of the Union's allegedly unlawful requirement of annual renewal of objector status. This requirement did not affect the employee's current union-security clause obligations nor prevent him from complying.