

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION NO. 34,
AFL-CIO, CLC

and

Cases 13-CB-18961
13-CB-18962

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, CLC

and

JOHN LUGO, An Individual

Kevin McCormick, Esq., for the General Counsel.

Matthew C. Muggeridge, Esq.,
(*National Right to Work Legal Defense Foundation*)
of Springfield, Virginia, for the Charging Party.

Victoria L. Bor, Esq.,
(*Sherman, Dunn, Cohen, Leifer & Yellig, P.C.*)
of Washington, D.C., for the Respondents.

DECISION

Statement of the Case

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Chicago, Illinois on October 27, 2008. The charges were filed by John Lugo, an individual, (“Charging Party”) on June 10, 2008,¹ and the order consolidating cases, consolidated complaint and notice of hearing (“complaint”) was issued August 28. The complaint as amended at the hearing alleges that the International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO, CLC (“Respondent Local”) and the International Brotherhood of Electrical Workers, AFL-CIO, CLC (“Respondent International”)(and jointly “Respondents”) violated Section 8(b)(1)(A) of the Act by informing employees subject to a union-security provision that in order to become and remain a *Beck* objector nonmember employees must renew their objections annually during November of the preceding calendar year, thereby breaching the fiduciary duty they owe to represented employees. Respondents’ answer admits the allegations in the complaint concerning the filing and service of the charges, interstate commerce and jurisdiction, labor organization and agency status, and the maintenance of collective-bargaining agreements by Respondent Local with union-security provisions. Respondents also admit that each advised nonmember employees of

¹ All dates are in 2008 unless otherwise indicated.

their obligation to renew their *Beck* objections annually in November but denied that this violated the Act.

I note that there is no allegation in the complaint that Respondent International represents any employees or has any collective-bargaining agreements with employers that include union-security provisions. This fact becomes important in assessing whether Respondent International owes a duty of fair representation to any employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondents, and the Charging Party, I make the following.

Findings of Fact

I. Jurisdiction

The Oberlander Electric Company, Inc., a corporation, performs electrical work out of its facility in East Peoria, Illinois, where it annually purchases and receives goods and materials valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which enterprises receives those goods and materials directly from points outside Illinois. The Respondents admits and I find that Oberlander is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Respondent Local and Respondent International each is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Facts

There are about 906 local unions affiliated with Respondent International; the local unions vary in size from seven to 30,000 members. Some local unions have full-time paid officers and staff while others have part-time officers who are paid very little. The local unions are charged with the responsibility of collecting all dues and enforcing the union-security provisions in collective-bargaining agreements. Members pay \$11 per month to Respondent International and the local unions determine what additional amounts should be added as local dues.

Respondents spend money collected under union-security provisions contained in collective-bargaining agreements on matters not germane to their representational duties. Respondents have procedures for nonmember employees who exercise their rights under *CWA v. Beck*, 487 U.S. 735 (1988) to pay only that portion of dues Respondents spend on representational duties. These procedures require objecting nonmember employees to annually renew their objections during November to be effective for the following year. The annual renewal procedures apply to all of Respondent International's affiliated local unions in the United States. Respondent International publishes an annual notice in its newspaper that it mails to all members and nonmembers who pay dues or fees to any local union. This annual notice advises the employees among other things, of their *Beck* rights, including the obligation to annually renew their objection during November. Local unions provide the same information to every new employee who becomes part of a bargaining unit.

Dmytro Halkyn is director of per capita department for Respondent International. Halkyn explained that before 1992 Respondents' procedures required *Beck* objectors to file their objections with the local unions as well as Respondent International in order to get a reduction

in the dues of the local union and international, respectively. But after a series of complaints issued by the General Counsel against local unions the procedures were revised pursuant to a settlement agreement to provide for only a single notice in order to get reductions for both the international and local portions of the dues. The revised procedures provided for objections to be filed with Respondent International to assure a measure of uniformity in the manner in which the objections were processed. But the annual renewal part of the objector procedures existed before the settlement and continued to remain in effect afterwards; they were not part of the litigation. Under Respondent International's dues reduction procedures each January objectors are sent checks for the amount of reduction for an entire year. This allows Respondent International to collect the same amount of dues during that year from objectors and nonobjectors alike. The downside, however, to this procedure is that employees may not remain covered by the union-security provision for the entire year and may therefore receive the partial dues remission when the employees did not pay dues. The local unions are allowed to create their own procedures concerning how they return nonchargeable portions of dues to *Beck* objectors. Some local unions provide upfront reductions while others reduce the payments made by objectors.

Lugo works as a journeyman electrician and has used the Respondent Local's hiring hall to obtain employment with various employers who are signatories to collective-bargaining agreements with it. On about June 8, 2007, Lugo exercised his *Beck* rights. The Respondents eventually recognized Lugo's *Beck* objections and refunded to him a portion of the dues he had paid.²

B. Arguments and Analysis

In his brief the General Counsel states that the complaint does not challenge Respondents use of the November window period but argues that:

The Respondents' requirement that nonmember *Beck* objectors renew their objections every year constitutes an arbitrary restriction on an employee's right to refrain from union membership and from supporting nonrepresentational expenditures.

The Board has yet to address this specific issue but there have been a number of court cases that have addressed this matter; they have come down on both sides of this issue. Those cases are described by Judge Biblowitz in his decision in *United Auto Workers, (Colt's Mfg. Co.)* JD(NY)-06-08 (March 3, 2008) and need not be repeated here. In that case Judge Biblowitz concluded that the annual renewal obligation violated Section 8(b)(1)(A). In *IAM, Local Lodge 2777(L-3 Communications Vertex Aerospace)* JD(ATL)-02-08, Judge Marcionese also concluded the union there violated Section 8(b)(1)(A) by requiring annual *Beck* objections. Finally, in *General Truck Drivers, Local No. 952 (Albertson's)*, JD(SF) 30-06 (May 30, 2006), I concluded in a different factual setting that the annual renewal obligation violated Section 8(b)(1)(A).

The General Counsel points by analogy to restrictions found unlawful by the Board in *California Saw and Knife Works*, 320 NLRB 224 (1995)³ such as requirements that *Beck*

² There is no allegation that manner in which Respondents processed Lugo's *Beck* objections was unlawful.

³ *Enf'd sub nom. Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

objectors file their objections individually and by certified mail. In *Polymark Corporation*, 329 NLRB 9 (1999), *rev'd in part on other grounds sub nom. Mahat v. NLRB* 248 F.3d 1150 (6th Cir. 2000), the Board specifically affirmed its conclusion in *California Saw* that a union violates its duty of fair representation when it imposes a window period limitation on an employee who recently resigned his membership in a union and who had also filed *Beck* objections.

I next emphasize the narrowness of the complaint allegations. The complaint does not allege that Respondents directly restrained or coerced employees in the exercise of their Section 7 right to become and remain *Beck* objectors. Rather, the complaint alleges only that Respondents breached their duty of fair representation by requiring annual renewal of *Beck* objections. As Respondents point out in their brief, the legal analysis in ascertaining a breach of a duty of fair representation is different from the analysis of a violation of a Section 7 right. The test for the former affords a union a wide range of reasonableness. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 45 (1998); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). By framing the complaint as he does the General Counsel is implicitly conceding the Section 7 right to become and remain a *Beck* objector is qualitatively different from the Section 7 right to resign from membership in a union. The latter is an unfettered right, *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), *Machinist Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984); the former may be encumbered so long as the encumbrances are not arbitrary or invidious. The Board has not yet differentiated between in this area between the Section 7 right to become and remain a *Beck* objector and notice requirements concerning this right that emanate from the duty of fair representation. So I test the annual renewal requirement under the duty of fair representation. I therefore do not apply what might otherwise have been persuasive arguments made in the Charging Party's brief concerning why the right to become and remain a *Beck* objector should be treated the same as the right to resign from union membership.

Having identified the legal analysis I will apply in this case, I note that the Respondents argue that it is the local unions, and not Respondent International, that has the duty of fair representation. In this regard the complaint supports this contention as it only alleges that Respondent Local represents employees. It does not allege, nor is there evidence, that Respondent International represents any employees, jointly with the local unions or otherwise. Neither the General Counsel nor the Charging Party explains in this case how a duty of fair representation applies to Respondent International. It follows that the complaint must be dismissed as it pertains to Respondent International.

I now turn to address whether the yearly renewal requirement breaches Respondent Local's duty of fair representation. Respondents argue that the annual renewal requirement should be viewed in context of their overall framework for handling *Beck* objections and that those overall procedures easily fall within a careful exercise of their duty of fair representation. One may concede that Respondents' *Beck* procedures are generally an acceptable exercise of a duty of fair representation. But this does not shield component parts of those procedures from examination. Stated differently, Respondents may not imbed an arbitrary procedure in an otherwise reasonable program and expect the arbitrary procedure to escape scrutiny.

Next, Respondents argue:

[T]he procedures that the IBEW and its local unions have put in place to administer fee objections including the annual renewal requirement are neither unfair, arbitrary nor invidious. Instead, the procedures were adopted by the International and made applicable to all of its local unions as a way of best assuring that in this large union with autonomous local unions of every size and level of staff, the rights of objecting non-members are honored. Thus, the

International developed a plan which was designed to assist local unions in fulfilling their obligations to represent non-members that it believed would best assure that objectors receive the information and the reductions to which they are entitled in a systematic and dependable way.

5 To support this argument Halkyn testified that Respondents maintain the annual requirement because:

10 We need to know that the individual still wants to receive the per capita reduction. We need to know that the individual is still employed and paying dues and fees. And we want to verify the individual's address. But most importantly, the up front annual reduction is, or should I say the renewal requirement is closely tied to the fact that we pay them up front. The two are interrelated and they work as one plan.

15 But it is Respondent Local that owes the duty of fair representation in this case; it can not pass off that duty to Respondent International. As the Charging Party points out in his brief, the:

20 [A]dministrative rationales offered by Respondent dealt with the Union's need to verify the objector's job and contact information. It can be conceded that some administrative purpose may exist for requesting and obtaining such information. What cannot be explained, however, is how the mandatory annual renewal of objection policy furthers or is related to the administrative need to maintain accurate employment and contact information for the represented employees.

25 Certainly Respondent Local is in a position to easily ascertain whether a unit employee continues to be employed and to maintain, so far as possible, current address information without maintaining the annual renewal requirement. Indeed, Respondent International has address and employment status information that it uses to satisfy its *Beck* and *General Motors* notice requirements yet it does not explain why this same information is not adequate concerning its dues remissions. Halkyn's testimony says little concerning why Respondent Local, who after all collects both the local and international portion of the dues, needs the annual renewal provision for any purpose other than challenging the continuing nature of the *Beck* objection. By this requirement Respondent Local limits *Beck* objector status to a period of one year per objection even absent any indication that the objector desired to place any time limitation on the objection. A *Beck* objector is not a member of a union, and as such the Supreme Court has stated "[T]he union has no more control over the former member than it has over the man in the street." *NLRB v. Granite State Joint Board, Local 1029*, 409 U.S. 213, 217 (1972). Because the annual renewal procedure serves no legitimate purpose it is arbitrary and breaches Respondent Local's duty of fair representation.

Conclusions of Law

45 By informing *Beck* objectors that they must annually renew their objections, Respondent Local violated Section 8(b)(1)(A).

Remedy

50 Having found that the Respondent Local Union has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Charging Party argues that to remedy the violation Respondents should be required to reimburse all dues collected from *Beck* objectors

who did not annually renew their objections. However there is no evidence that Respondent Local has actually collected full dues from *Beck* objectors who failed to annually renew their objections. Moreover, in his brief the General Counsel does not request any make whole remedy; instead he requests only a cease and desist order and notice posting. Certainly if there was evidence that Respondent Local actually collected full dues from the nonmembers who did not annually renew their objections the General Counsel would have sought a make whole remedy. Under these circumstances I conclude there is no factual basis in this case to support a make whole remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.⁴

ORDER

The Respondent Local, the International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO, CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Informing *Beck* objectors that they must annually renew their objections.

(b) In any like or related manner restraining or coercing employees in the exercise of 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) Within 14 days after service by the Region, post at its union offices and hiring halls in Illinois, copies of the attached Notice marked "Appendix."⁵ Copies of the Notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since December 11, 2007.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁵ 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."

(b) 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 Respondent has taken to comply.

5 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 19, 2008

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William G. Kocol
Administrative Law Judge

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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 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 with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT inform employees covered by a union-security provision who object to paying full membership dues that they must file those objections annually.

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

International Brotherhood of Electrical Workers,
Local Union No. 34, AFL-CIO, CLC

(Labor Organization)

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.nlrb.gov.

209 South LaSalle Street, 9th Floor

Chicago, Illinois 60604

Hours: 8:30 a.m. to 5 p.m.

312-353-7570.

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, 312-353-7170.