

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

Advice Memorandum

DATE: August 31, 2000

TO : William C. Schaub, Regional Director
Region 7

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

SUBJECT: Teamsters Local 332 536-6040-8100
(Genesys Regional Medical Center)
Case 7-CB-12343

This Beck¹ case was submitted for advice as to a charging party's burden of proof or production when filing a Section 8(b)(1)(A) charge attacking a union's reduced fee and disclosure statement.

The Charging Parties, who are Beck objectors, contend that this charge constitutes a challenge to the Union's disclosure. Under California Saw,² a union that is the Section 9(a) representative of certain employees who are subject to a union security clause is required to give those employees, inter alia, a notice that they can elect to be charged only representational fees and that they can challenge the amount of those fees through a challenge procedure which the union is required to maintain. Under this procedure, the union has the burden to establish that the fees charged are representational. Here, the Charging Parties have decided not to participate in the Union's internal challenge procedure. Instead, the Charging Parties have filed the instant charge and contend that the burden is on the Charged Party Union to justify the amount of the fees. The Union has declined to provide any information to the Region in response to the charge.

The Region has concluded that the Union's disclosure improperly excluded organizing expenses even though there is evidence, in the form of newspaper articles the Charging

¹ Communications Workers v. Beck, 487 U.S. 735 (1988)

² California Saw and Knife Works, 320 NLRB 224 (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).

Parties submitted, that the Union has engaged in organizing activities.³

We conclude that an unfair labor practice charge such as this one cannot be construed as a challenge within the meaning of California Saw to a union's disclosure. Thus, the charge must be dismissed to the extent that the Charging Parties have failed to submit evidence, or material pointing to evidence, that the disclosure is defective or that Beck objectors have been improperly charged for specific nonchargeable activities. See GC Memorandum 88-14, "Guidelines Concerning Processing of Beck Cases," dated August 17, 1998.

We recognize that in OPEIU Local 29 (Dameron Hospital), 331 NLRB No. 15 (2000), the Board held that the union violated Section 8(b)(1)(A) by, inter alia, requiring objectors to challenge specific expense categories. Thus, the Board held that an objector could make a general challenge to a union's entire disclosure. However, the Board has also held that once an objector notifies a union that the objector questions a disclosure or challenges a charge, either generally or specifically, the burden is on the union to provide sufficient information to justify its disclosure and its charges.⁴ A union may provide that information through its arbitration system, even if a charging party does not wish to be bound by an arbitral award. With information obtained through the union's arbitral system, the objector can then file a charge with the Board attacking the disclosure or union treatment of a specified expense as chargeable.

The Board's conclusion in Dameron is the logical outgrowth of its initial decision in California Saw that a union's Beck obligations are part of its duty of fair representation and that a union must provide increasingly

³ The violation is the exclusion of organizing expenses from the Union's disclosure, not the charging of the Charging Parties for such organizing activities. See, e.g., UFCW Locals 951, 1037 and 7 (Meijer, Inc.), 329 NLRB No. 69 (1999).

⁴ See, e.g., Teamsters Local 75 (Schreiber Foods), 329 NLRB No. 12, slip op. at 4 (1999); Teamsters Local 166 (Dyncorp Support Services), 327 NLRB No. 176, slip op. at 5 (1999); Teamsters Local 443 (Connecticut Limousine Service), 324 NLRB 633, 634 (1997); CWA Local 9043 (Pacific Bell), 322 NLRB 142 (1996), enfd. sub nom. Finerty v. NLRB, 113 F.3d 1288 (D.C. Cir. 1997).

detailed information to employees when they decide, first, whether or not to become financial core members, second, Beck objectors, or, third, challengers to the union's disclosure and charges.

However, the General Counsel has the burden of establishing, in an unfair labor practice proceeding, that the union has violated the Act. Since the filing of an unfair labor practice charge by an objector does not trigger any duty of fair representation by a union, the union has no obligation to provide information to the General Counsel. Therefore, the filing of a charge is not the same as the filing of a challenge before a union. Therefore, we reaffirm GC Memorandum 98-11 stressing the obligation of a Beck objector who files a Board charge to provide enough evidence, or information pointing to evidence, of a violation to justify the Agency's further investigation of the charge.⁵

While there may be circumstances in which challenging a union's disclosure and participating in its arbitration proceeding may be the best way for an objector to obtain information sufficient to sustain a Section 8(b)(1)(A) charge, we note that a Beck objector does not have to resort to a union's challenge procedure in order to obtain information necessary to sustain a Board charge, as this case demonstrates. Here, the Charging Parties apparently learned of the Union's organizing activities through articles in local newspapers. The Region has concluded that those articles are sufficient evidence to justify a complaint attacking the omission of organizing activities from the Union's disclosure.

In summary, we agree with the Region's conclusion that the Union impermissibly omitted organizing expenses from its disclosure because the Charging Parties have provided evidence sufficient to support such an allegation. All other allegations should be dismissed, absent withdrawal.

B.J.K.

⁵ See also IBT Local 401 (United Parcel Service), Case 4-CB-8310, Appeals letter dated July 14, 2000.