

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

# Advice Memorandum

DATE: November 16, 2007

TO : Richard L. Ahearn, Regional Director  
Region 19

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

SUBJECT: International Assoc. of Machinists &  
Aerospace Workers And IAM District 536-2581-3307-5010  
Lodge 160 (Swissport USA, Inc.)  
Case 19-CB-9642

This Section 8(b)(1)(A) case was submitted for advice as to whether the Union's General Motors<sup>1</sup> and Beck<sup>2</sup> notices, printed on the back of its membership application, are deficient.

We conclude that the Union's notices do not adequately apprise employees of their rights and therefore that the Union has violated Section 8(b)(1)(A) by failing to give proper General Motors and Beck notices.

### FACTS

The Union and Swissport USA, Inc. (the Employer) have a collective bargaining relationship. Their most recent contract, effective from September 1, 2003 through August 31, 2007, contained a valid union security clause.

The Charging Party began working for the Employer as an aircraft technician on May 17, 2007. Two or three days after he was hired, the Employer's Station Manager informed him that mechanics were represented by the Union and gave him a plastic bag containing a variety of Union items. These included a welcome letter, a membership application/dues-checkoff authorization, a 42 page "IAM Owners Manual," benefits information, non-partisan political brochures, community service information, and a copy of the collective-bargaining agreement.

The Union's welcome letter notes, in part: "NEWLY HIRED EMPLOYEES SHALL, AS A CONDITION OF EMPLOYMENT BECOME

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<sup>1</sup> NLRB v. General Motors, 373 U.S. 734 (1963).

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

MEMBERS OF THE UNION WITHIN THIRTY-ONE (31) DAYS AFTER THE DATE OF HIRE, AND REMAIN MEMBERS DURING THE TERM OF THE AGREEMENT...."

The membership application/dues check-off authorization form given to the Charging party<sup>3</sup> was a three-page document the size of a half sheet of paper. The General Motors and Beck rights were outlined on the back of the last page, a pink copy to be kept by the applicant. The notice is printed in light gray type that was smaller and substantially fainter than the typeface on the front of the application form.

The front of the membership application contained a line for the applicant's signature. Printed immediately above the signature line was the following paragraph:

**Important Notice.** I have examined and acknowledge receipt of the attached "Notice to Employees Subject to Union Security Clauses" (on back of pink sheet). I also understand that IAM members have certain rights and privileges as set forth in the IAM Constitution and in various Federal laws, like the Labor Management Reporting and Disclosure Act (LMRDA). Copies of the IAM Constitution and the LMRDA may be obtained by contacting the IAM General Secretary-Treasurer, 9000 Machinists Place, Upper Marlboro, MD 20772. Union membership dues and agency fees are not deductible as charitable contributions for Federal income tax purposes. Dues and agency fees, however, may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Code.

In addition to the notice on the back of the membership application, the General Motors and Beck rights were also printed in the "IAM Owner's Manual," a copy of which the Charging Party received in the plastic bag. The notices appeared at Appendix D (page 40) of the Manual, and the Table of Contents identified Appendix D as a "Notice to Employees Subject to Union Security Clauses."

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<sup>3</sup> The International revised this form approximately two years ago, increasing the font size and visual clarity of the back-page notices. However, it is undisputed that the Charging Party received the old form. The International's attorney indicated to the Region that some of the Local unions might be using up their old stock before ordering new forms.

The Charging Party states that he went through the information in the bag but did not give the application or manual a close inspection since he had no intention of joining the Union. He testified that he did not see the information on the back of the membership application until the Right to Work attorney pointed it out to him.

### **ACTION**

The Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by failing to adequately apprise employees of their General Motors and Beck rights.

In California Saw & Knife Works, the Board held that unions have an obligation to notify new employees of their Beck and General Motors rights before or at the time they seek to obligate those employees to pay dues.<sup>4</sup> The form and content of that notice must be "reasonably calculated to apprise the nonmember employees of Beck [and General Motors] rights."<sup>5</sup> In California Saw, the Union was found to have violated Section 8(b)(1)(A) by failing to provide a concurrent notice of Beck and General Motors rights when it presented new employees with a membership application/dues checkoff authorization form. With regard to current employees, the Board found that the union's publication of an annual notice was sufficient, notwithstanding that it appeared in the middle of a 12 page newsletter, because the notice was sufficiently highlighted and set apart from other text such that a nonmember employee "making any reasonable perusal of the publication" should have been alerted to the Beck policy.<sup>6</sup>

In contrast, in UFCW Local 648 (Safeway, Inc.),<sup>7</sup> where the union's new employee Beck notice was printed in small, faint type on the back of the first page of a three-page membership application, we found that the notice was "hidden" or "buried" and "not reasonably calculated to apprise" employees of their rights because a nonmember would not be likely to read the back of the top copy of the

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<sup>4</sup> California Saw & Knife Works, 320 NLRB 224, 231, 233, 235 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998).

<sup>5</sup> Id. At 234, n. 55.

<sup>6</sup> Ibid.

<sup>7</sup> Case 20-CB-11846, Advice Memorandum dated February 28, 2003.

membership application.<sup>8</sup> In UFCW, Local 101 (Macy's West, Inc.),<sup>9</sup> we also found the union's notice inadequate where it was printed in light grey type on the back of all three pages of a triplicate form, but there was no language on the front alerting employees to the notice on the back. And, in International Brotherhood of Teamsters, Local 17 (Alan Ritchey, Inc.),<sup>10</sup> we found a notice in faint print on the back of a membership application to be inadequate notwithstanding the statement, on the front of the application, that the employee was acknowledging "receipt of the union security notice"; we noted that there was nothing on the front of the application that alerted employees that the notice was on the back of the form, or that explained what "union security" was, and an employee could reasonably assume that other language on the front, which described the basic obligations of union membership, was the union security notice.

Here, we conclude that the Beck and General Motors notice provided to the Charging Party was similarly inadequate. It was printed in small, faint type on the back of the triplicate application form and, although there was language on the front of the form that alerted employees to a notice on the back, there was no explanation of what a "union security" notice was and the notice itself was difficult to read. In these circumstances, we conclude that the notice was not reasonably calculated to apprise nonmembers of their General Motors and Beck rights.

Although the Union also provided new employees with an "IAM Owner's Manual," which included a regular-font version of the same notice as on the back of the application form, the Charging Party was not instructed to read that notice and there was nothing on either the Manual cover or in its Table of Contents that encouraged employees to immediately read it.<sup>11</sup> Thus, this was not sufficient "concurrent"

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<sup>8</sup> See also IBT, Local 377 (Humility of Mary Health Partners/St. Elizabeth Health Center), Case 8-CB-9415, JD-03-04, 2004 WL 298352, slip op. at 4 (2004) (ALJ found notice inadequate where it was printed on only the second and third pages of a triplicate form, and there was nothing on the first page that "specifically directed" employees to the information found on the other pages).

<sup>9</sup> Case 20-CB-12253, Advice Memorandum dated June 22, 2005.

<sup>10</sup> Case 19-CB-9531, Advice Memorandum dated March 5, 2007.

<sup>11</sup> Compare UFCW Local 101 (Macy's West), supra (an otherwise inadequate notice which was printed in small, gray font on the back of a membership application was cured when the

notice to new employees of Beck and General Motors rights because the employees did not actually receive the notice before or at the time the Union sought to obligate them under the union security clause.

Accordingly, the Region should issue a Section 8(b)(1)(A) complaint, absent settlement.

B.J.K.

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union representative orally directed applicants' attention to the notice).