

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

Advice Memorandum

DATE: June 2, 2009

TO : James F. Small, Regional Director
Region 21

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

SUBJECT: United Electrical, Radio and Machine
Workers of America (UE) Local 1008
(Stanley Associates, Inc. USCIS
California Service Center)
Cases 21-CB-14631, 21-CB-14665;
21-CB-14632; 21-CB-14666 536-2581-3307-5010

This Section 8(b)(1)(A) case was submitted for advice as to whether (1) the Union provided bargaining unit members with adequate initial notice of their Beck¹ rights by mailing them a copy of the October 2008 UE News, and (2) the format of the UE News constituted adequate notice to employees of their Beck rights.

We conclude the Union's mailing of the October 2008 UE News to unit employees provided sufficient initial notice of employees' Beck rights. Likewise, we conclude the format of the UE News constituted adequate notice to employees of their Beck rights.

FACTS

On March 14, 2008,² the Union was certified as the collective bargaining representative for the employees of Stanley Associates, Inc. (the Employer) employed at the Laguna Niguel Citizenship and Immigration Service Center. On September 24, the Union and Employer executed a collective bargaining agreement containing a valid union security clause, effective 30 days after execution of the

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

² All dates referred to hereinafter are 2008, unless otherwise noted.

Agreement. Despite the effective date, the Union decided that it would not charge dues and initiation fees until December 3, the date on which negotiated, employee raises were effective.

The Union mailed a copy of the UE News to unit employees twice in October – on October 3 by third class U.S. mail as part of a broader mailing to all private sector UE employees covered by union security clauses, and on October 13 by first class U.S. mail. This issue of the UE News was a 16 page newsletter printed on newsprint paper measuring 16 by 12 inches. For mailing purposes, the newsletter was folded in quarters. Inside the first fold of the newsletter was a photograph of Local 1008's newly-organized employees at the Laguna Niguel Citizenship and Immigration Service Center. A caption highlighted the new contract between the Union and Employer.

The full 14th page of the newsletter was devoted to a notice, printed in both English and Spanish, which informed employees of their rights under General Motors³ and Beck. This Notice explained the procedure for obtaining a reduction of fees and informed employees that Beck objections could be filed within 30 days of mailing of the Notice or in the month of November. The Notice was printed on a gray background in black type of a standard font that was slightly smaller than most font in the newsletter. Opposite the Notice, the 15th page of the newsletter contained the conclusion of an article on the Laguna Niguel employees' new contract. The article's bold heading read "Local 1008 Members Ratify First Contracts With Stanley, Northrup Grumman, SPS."

Several employees timely sent Beck objections to the Union, including a Charging Party, who mailed an objection on November 30. The Union notified these employees that it received their objections and would honor them. In late December, another Charging Party and other employees mailed to the Union requests to become Beck objectors. The Union informed these employees that it would not honor their objections because they were not timely.

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

ACTION

The Region should dismiss, absent withdrawal, the allegations the Union failed to provide sufficient Beck notice to the charging parties and similarly situated employees.

The Supreme Court held in General Motors⁴ and Beck,⁵ respectively, that employees subject to a union-security clause have the right to be non-members, and that a union has a fiduciary duty not to spend an objecting non-member's dues and fees on nonrepresentational activities. A union must inform employees of those rights.⁶ The issue in this case is whether the Union's notice adequately informed employees of those rights.

1. Mailing Initial Beck Notice in October

We conclude that by mailing the UE News on October 3 and October 13, the Union gave employees in the newly certified unit adequate initial notice of their Beck rights.

In California Saw & Knife Works, the Board held that unions have an obligation under the duty of fair representation to give Beck rights notice to (1) newly hired non-member employees at the time the Union seeks to obligate these newly hired employees to pay dues and (2) currently employed employees who were not previously been notified of their Beck rights when or before the Union seeks to obligate them to pay dues.⁷ With regard to currently employed nonmembers, the union meets that obligation as long as it has taken reasonable steps to insure that all employees are given notice of their rights

⁴ Ibid.

⁵ CWA v. Beck, supra.

⁶ California Saw & Knife Works, 320 NLRB 224, 233 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998).

⁷ Id. at 231.

before the union seeks to obligate them to pay dues.⁸ The Board in California Saw found that the union's publication of an annual notice, mailed to employees, was sufficient.⁹ Furthermore, the obligation to provide Beck notice is met by giving notice once; it is not a continuing requirement.¹⁰

Here, the issue is whether the Union's October Beck notices to currently employed nonmembers was sufficient to satisfy the Union's duty. The Union entered into a collective bargaining agreement containing a union-security clause in September; the union-security clause was, on its face, effective in October, the same month the Union twice mailed the UE News containing the Beck notice; the Union sought to have employees sign membership applications and dues check-off in November; and employees were subject to obligations under the union-security clause in December. The notice was thus given before the Union sought to obligate employees to pay dues, such that employees would reasonably read the notice and understand its applicability to them. Therefore, the Union met its obligation under the duty of fair representation to inform employees of Beck rights before seeking to obligate them to the terms of a union-security clause.

2. Format of the Beck Notice

We also conclude that the format of the Union's notice contained in the October issue of the UE News was sufficient.

The form of a union's Beck notice is not prescribed by the Board¹¹ but must be "reasonably calculated" to apprise nonmember employees of their rights.¹² When published in a

⁸ Id. at 233.

⁹ Id. at 235.

¹⁰ Paperworkers Local 1033 (Weyerhaeuser Paper Co.), 320 NLRB 349, 350 (1995).

¹¹ Id. at 350.

newsletter, the Board looks to whether the notice is "buried" for "purposes of obfuscation."¹³ In California Saw, the Board found that for notice to current employees, a 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.¹⁴

As in California Saw, the notice in the UE News was reasonably calculated to apprise the nonmember employees of their Beck rights. The notice was not buried,¹⁵ but rather, took up an entire page in a newsletter that was only four pages longer than the one in California Saw. Additionally, as in California Saw, it was further set apart from other text with a different background. Moreover, the newsletter contained a front-page article on the organizing drive at the Employer's facility, and that article continued on a page opposite from the Beck notice. Given these facts, we conclude that the format of the Beck notice was adequate.

Accordingly, the Region should dismiss the 8(b)(1)(A) allegations regarding Beck notification, absent withdrawal of the charges.

B.J.K.

¹² California Saw & Knife Works, 320 NLRB at fn. 55.

¹³ *Id.* at 234.

¹⁴ *Ibid.*

¹⁵ Compare with 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), where Beck notice was mixed in with eight other articles on page 16 of 20 page publication, with no table of contents.