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

Advice Memorandum

DATE: November 30, 2007

TO : Dorothy L. Moore-Duncan, Regional Director
Region 4

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

SUBJECT: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 9999 (Alcoa Engineering)
Cases 4-CB-9841, 4-CB-9859, and 4-CB-9879

This case was originally submitted for advice on several Beck issues, including whether the Union unlawfully relied on its 2004 expenditures in determining its chargeable expenses to Beck objectors in 2007.[1] In light of a recent settlement agreement on this issue involving the same International, the Division of Advice requested the Region to investigate this issue further. We now conclude that the Union violated Section 8(b)(1)(A) by utilizing its 2004 financial data to calculate chargeable expenditures in 2007.

FACTS

Charging Parties Ronald Stablewski and Walton Harrold are employed by the Employer and covered by its collective-bargaining agreement with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union Local 9999 (Union), which contains a union-security clause. In the fall of 2006, Harrold and Stablewski gave notice of their objector status and requested verified breakdowns of the Union's representational and non-representational expenditures. The Union failed to acknowledge their status as Beck objectors in 2006.

Meanwhile, the Steelworkers International (USW) substantially completed it 2005 breakdown of chargeable and nonchargeable expenditures in early-mid December 2006 (the Twenty-Fourth Report). The USW then sent that breakdown to

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[1] The Division of Advice issued a memorandum on October 10, 2007, deciding the other Beck issues raised in this case.

its independent auditing firm to audit its nonchargeable expenditures. The auditor began review of the 2005 breakdown in early January 2007, and, about one week later, drafted a report indicating that it concurred with the USW's calculations. The auditing firm then submitted the draft for internal review and produced its final version in late February 2007.[2]

On April 3, 2007, the Steelworkers' International (USW) General Counsel acknowledged the Charging Parties' objections and notified them of the percentage reduction for expenditures unrelated to collective-bargaining, but based this reduction on a breakdown of chargeable and non-chargeable expenditures for 2004 (the Twenty-Third Report).

The USW suggests that it reasonably decided to base Harrold and Stablewski's dues to reductions on the 2004 data even though the 2005 breakdown was available in April 2007 because it had based first quarter advanced rebates on the 2004 data. The USW provides most Beck objectors with quarterly advanced reduction payments at the beginning of each quarter based on the dues the USW expects to receive from the objectors during that quarter. In January 2007, the USW decided that, rather than face complaints about delays in processing rebates, it would give the objectors their advanced reduction based on the 2004 breakdown instead of the 2005 breakdown, which was still pending with the auditor. The USW also notes that the percentage of chargeable expenditures was higher in 2005 than 2004; thus, if it had utilized the more recent financial information, the Charging Parties here would in fact have been required to pay more dues.

ACTION

We conclude that, absent settlement, complaint should issue here alleging that the Union acted unlawfully by basing its 2007 calculations of chargeable expenses on a 2004 financial data.

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[2] As noted in our previous memorandum in the case, a union is not required to have an independent audit of the breakdown of chargeable and nonchargeable expenditures. See United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Applied Industrial and Service Workers International Union Local 9999 (Alcoa Engineering), 4-CB-9841, dated October 10, 2007, at 5-6. A union, however, can certainly conduct such an audit if it chooses.

In General Counsel Memorandum 88-14, "Guidelines Concerning CWA v. Beck," dated November 15, 1988, at 4, the General Counsel stated that the disclosure which a union is to furnish an objector after his objection and each year thereafter should cover the previous accounting year.[3] The Board did not reach this issue in California Saw and Knife Works, as the union's audit in that case was for the previous year's expenses.[4] However, unions' representational costs may vary from year to year, depending on the varying nature of its activities, and an objector is entitled to know reasonably accurately that he or she is being asked to pay for the union's recent representational costs, rather than for expenses incurred several years ago.[5]

We conclude that before the Union may collect from an objecting nonmember compulsory dues pursuant to a union security clause, it must provide timely financial data upon which an objector can base its decision whether to challenge the calculation of the fee. Here, unlike other cases where the financial data is based on the immediately preceding year, the information provided the Charging Parties was based on expenses incurred three years earlier. Thus, the Union cannot lawfully collect union-security monies from objecting nonmembers in 2007 based on its verified expenses and chargeability calculations for the year 2004. In these circumstances, we conclude that the Union violated its duty of fair representation by failing

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[3] Citing Chicago Teachers Union v. Hudson, 475 U.S. 292, 306-307 (1986). In Hudson, the Supreme Court stated that a union "cannot be faulted for calculating its fee on the basis of its expenses during the preceding year." 475 U.S. at 307 n.18.

[4] 320 NLRB 224, 239 (1995).

[5] Int'l Union of Gas Workers (Washington Gas Light), 5-CB-8066, Advice Memorandum dated June 21, 1995 (authorizing complaint where expenditure information covered two years earlier and finding union's explanation that it prepared audit every two years was inadequate). One district court considering this issue under constitutional principles held that Hudson requires annual, updated financial disclosure of union expenses. See Laramie v. Santa Clara County, 784 F.Supp. 1492, 1496-1497 (N.D. Cal. 1992), where the union, in 1989 and 1990, "simply mailed out the same notice and financial data that it used to calculate the 1988 fair-share fee." The district court found that the union's failure to provide "annually updated" financial information was unlawful.

to provide a calculation of the reduction percentage based on more recent financial data.

We further note that the General Counsel would have reached the same conclusion in United Steelworkers (Metaldyne), 8-CB-10525 et al. (2006), where the Division of Advice recently considered whether the USW violated Section 8(b)(1)(A) by calculating a reduced percentage for 2005 dues based on 2002 expenses. The General Counsel was inclined to issue complaint, but the USW agreed to an informal Board settlement, whereby it agreed to speed up its processes and base dues reduction calculations on reasonably current financial data. The USW represented to the Division of Advice that it would complete its 2005 chargeable/non-chargeable breakdown report by the end of calendar year 2006. Despite this representation, the Twenty-Fourth Report or 2005 breakdown was not ready until late February 2007.

The USW argues that these charges should be dismissed because, in the spirit of the Metaldyne settlement agreement, the USW sped up its process for calculating chargeable/nonchargeable expenditures and otherwise reasonably balanced competing interests. Although the USW did speed up its processes after the Metaldyne settlement, it failed complete its 2005 financial calculations in January 2007 as it had represented to Advice that it would. Further, even though the USW had completed its 2005 calculations in late February 2007, it still provided the Charging Parties with the 2004 data months later. We thus, conclude that the USW breached its duty of fair representation.

We note that the Metaldyne settlement did not expressly obligate the USW to complete its breakdown report by the end of the year following the year which is the subject of the report. Further, although the Union did not fully comply with its representation to Advice in connection with the Metaldyne settlement, it prepared the 2005 report more promptly than previously. [*FOIA Exemption 5*

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[6] [*FOIA Exemption 5*

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[7] [*FOIA Exemption 5*

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