

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

Advice Memorandum

DATE: September 20, 1996

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: Utility Workers of America Local 132
(The Gas Company)
Case 31-CB-9769

524-5090-5077-8000
536-2554-2500
548-6050-3325
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This case was submitted for advice on the issue of whether a union could charge Beck objectors additional dues to prepare for the possibility that the Employer would cease honoring employees' dues checkoff authorizations when the collective-bargaining agreement expired.

FACTS

The Employer is a public utility. The Union, Utility Workers of America Local 132, represents several thousand of the Employer's employees, including about 280 nonmembers. The last collective-bargaining agreement herein was effective from March 9, 1994 through March 31, 1996. As of June 15, 1996, the parties had not reached agreement on a new contract. The expired contract contained both a union-security clause and a checkoff provision. Checkoff authorizations signed by employees provided that

no deductions are authorized for any applicable pay period unless for some portion of said pay period, there is in force... an agreement... that extends until the April 1 next following the start of said period.

Checkoff authorizations have been signed by many if not all of the members and nonmembers the Union represents.

In October 1995, the Union began to prepare for new contract negotiations. It proposed to its members that they approve a 100% increase in dues for the four months beginning December 1995. The Union's stated purpose was to

advance the collection of its members' dues because after the expiration of the contract the Employer might cease checking off dues, and because the Union deemed dues collection without the benefit of checkoff to be administratively difficult. During a November 1995 Union meeting, members voted to amend the Union's Constitution to require the payment of double dues for four consecutive months beginning with the first payroll period of December 1995. The amendment further recited that:

These additional dues will be used as regular dues payments in the event that the Company refuses to make payroll deduction of dues. If no suspension of dues takes place, the additional dues will be returned to the members upon ratification of a general contract.

Thereupon, the Employer checked off the advance payments of dues from the wages of members and nonmembers alike for the four remaining months of the contract. There is no evidence that the Union threatened any employee with discharge for failure to pay the dues advance. At the expiration of the contract the Employer in fact ceased checking off dues and representational fees.

The instant charge, filed by a Beck¹ objector, alleged that the dues increase was unlawful because it required nonmembers to pay dues during the hiatus between collective-bargaining agreements.² The Union responded that the increase was intended to reduce the difficulty of collecting dues from members.

ACTION

We concluded that complaint should issue, alleging that the Union, by collecting dues from nonmembers for

¹ CWA v. Beck, 487 U.S. 735 (1988).

² The charge does not attack the dues increase as to full members. While the charge also alleged that the Union failed to comply with its Beck obligations, the Region has dismissed the charge with respect to that allegation. The Charging Party filed no charge against the Employer.

periods when a collective-bargaining agreement was not in effect, violated Section 8(b)(1)(A). [FOIA Exemption 5

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This case squarely raises the question of whether a union can charge nonmember Beck objectors their dues obligations, i.e., their aliquot portions of the union's representational expenses, for periods when no collective-bargaining agreement is in effect.

As Beck objectors are a subset of nonmembers, when we consider the obligations of Beck objectors, the models to which we look are the employee who has never become a full member and the former full member who has resigned from union membership. As to such individuals, it is long settled law that they cannot lawfully be charged any amount unless and until the employer and the union execute and make effective a collective-bargaining agreement which contains a union-security clause.³ In addition, while the practice of checkoff does not require a union security clause, and while the General Counsel has taken the position that the practice of checkoff normally survives the expiration of a collective-bargaining agreement⁴ and cannot be changed without bargaining, here, as noted, the checkoff authorizations executed by employees, including those executed by the Beck objectors, by their terms denied the Employer the authority to check off dues for periods when no contract was in effect. Hence the Union here could not charge the Beck objectors, or any other nonmembers, for the period during which there was not a collective-bargaining agreement. Even assuming that the Union's sole

³ Local 140, United Furniture Workers of America (The Englander Company), 109 NLRB 326 (1954), and cases cited therein; Transit Union Local 1225 (Greyhound Lines), 285 NLRB 1051 (1987) (dues obligation during the hiatus between contracts); Auto Workers Local 785 (Dayton Forging), 281 NLRB 704 (1986) (same).

⁴ Hillhaven Corp., Case 20-CA-26687, Appeals Minute dated December 7, 1995.

objective was to cause members to pay advance dues, and even though the deduction occurred during periods when the contract was in effect, the deduction was in anticipation of a period when there might be no contract. By causing and permitting the Employer to check off nonmember dues for that period, the Union violated Section 8(b)(1)(A).

As to all the 280 nonmembers herein, regardless of whether they are Beck objectors, they are deemed to desire not to pay the Union any more than they can lawfully be required to pay.⁵ [*FOIA Exemption 5*

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B.J.K.

⁵ Cf. Local 60, Carpenters v. NLRB, 365 U.S. 651 (1961).