United Food and Commercial Workers Union, Local 4, affiliated with United Food and Commercial Workers Union (Safeway, Inc.) *and* Pamela Barrett. Case 19–CB–9660

October 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On May 20, 2008, Administrative Law Judge James M. Kennedy issued the attached bench decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions, a supporting brief, and an answering brief to the General Counsel's exceptions.

This case involves the application of extant precedent concerning employees who object to paying dues for nonrepresentational activities pursuant to the Supreme Court's decision in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988) (*Beck*), and the sufficiency of the financial information a union must provide to these objectors to satisfy its duty of fair representation under the Board's decisions in *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998) (*California Saw*), and *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), reconsideration denied 327 NLRB 802 (1999), petition for review dismissed 1999 WL 325508 (D.C. Cir. 1999) (*KGW Radio*). The judge found that the Respondent satisfied its duty of fair representation by providing the Charging Party, a *Beck* objector, with sufficiently verified financial information and dismissed the complaint.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.[2] Specifically, we reverse the judge's finding and conclude that the Respondent violated its duty of fair representation and therefore Section 8(b)(1)(A) by failing to provide the Charging Party with sufficiently verified financial information.

Background

The Respondent represents a unit of retail employees at the Safeway store in Whitefish, Montana. The employees are covered by a collective-bargaining agreement, which contains a union-security clause. Charging Party Pamela Barrett began working at the Whitefish store on April 4, 2007.[3] On May 4, the Respondent notified Barrett of her rights to join or be a financial core member of the Union and, in the latter case, to object to paying union dues for nonrepresentational activities. Subsequently, Barrett notified the Respondent that she did not want to be a union member and that she wanted to pay only the "agency fee." She also requested a "verified financial disclosure of union expenditures." On May 11, the Respondent acknowledged Barrett's request for nonmember status and informed her that her dues would be $31.50 per month, which represented 95 percent of the current member dues rate. As support for this reduction, the Respondent provided Barrett with a 1-page financial statement, listing its chargeable and nonchargeable expenses for the year ending December 31, 2006, and stating its chargeable expense rate for representational activities to be 95 percent of its total expenses. The Respondent also provided Barrett with the International Union's 2005 audited financial statement, which stated the International's chargeable expense rate to be 85 percent. The Respondent reiterated this information in a May 16 letter.

In her May 29 response, Barrett asserted that she "was not provided with any information that explains or justifies the calculation of this high agency fee." She requested that the Respondent provide her with her "procedural rights," including a verified financial disclosure explaining the basis for the calculation of the "agency fee." On June 15, the Respondent responded to Barrett, stating that it was a small local union and thus it did not have many nonchargeable expenses. The Respondent directed Barrett to the expenditure information it provided on May 11 and reasserted that her nonmember dues would be $31.50 per month.

On December 14, apparently in an attempt to settle this case, the Respondent sent Barrett a reimbursement check for the difference between the dues she paid from May to December based on the Respondent's 95-percent chargeable expense rate, and the amount she would have paid if her dues had been calculated using the International Union's 85-percent chargeable expense rate.[4] In addition,

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] We shall substitute a new Order and notice consistent with this decision.

[3] Unless otherwise noted, all dates are 2007.

[4] The December 14 correspondence also stated that, effective January 2008, Barrett's dues would be "calculated at 95% of the then current dues rate." However, both Barrett's testimony at the hearing and the General Counsel's closing argument to the judge, indicate that,

the Respondent acknowledged that when it provided its statement of chargeable expenses on May 11, it did not include a report showing that the figures in the statement were reviewed by an accountant. The Respondent thus provided the "Independent Accountant's Report," dated February 19, which stated that an accountant reviewed the expenditure statement, but that the information included in the statement was based solely on the representations of the Respondent's management. The report further stated that it was "substantially less in scope than an audit" and that the accountant expressed no opinion regarding the financial statement as a whole.

Judge's Decision

The complaint alleges that the Respondent violated Section 8(b)(1)(A) of the Act by failing to provide Barrett with an adequate explanation of the discrepancy between the International Union's total amount for chargeable expenses (85 percent) and the Respondent's total amount for chargeable expenses (95 percent). At the hearing, however, much of the parties' testimony and arguments focused on whether the expenditure information the Respondent provided to Barrett on May 11, categorizing its expenses and forming the basis for the 95-percent chargeable expense rate, was sufficiently verified pursuant to *California Saw* and *KGW Radio*, discussed below.[5] The judge thus did not pass on the complaint allegation and instead addressed the unalleged issue of whether the information provided to Barrett was sufficiently verified. The judge found that the May 11 expenditure information satisfied the Board's verification requirements. He noted that although the "Independent Accountant's Report" was based only on materials provided by the Respondent, the report adequately broke down the Respondent's expenses into chargeable and nonchargeable categories. He thus found that the Respondent did not violate its duty of fair representation and dismissed the complaint.

Analysis

In *Beck*, the Supreme Court limited the dues and fees a union can collect from objecting nonmember employees under a contractual union-security clause to amounts expended on activities germane to the union's role as collective-bargaining representative. In *California Saw*, the Board held that a union breaches its duty of fair representation if it fails to inform unit employees of their *Beck* rights. Supra, 320 NLRB at 233. The Board also held that once an employee objects to paying dues for nonrepresentational activities and seeks a reduction in fees for such activities, the employee must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge the union's figures. Id. To ascertain whether the information given objectors satisfies the union's duty of fair representation, the Board assesses whether the information is sufficient to enable the objector to determine whether to challenge the dues-reduction calculations. Id. at 239. In *KGW Radio*, the Board required that such expenditure information be audited "within the generally accepted meaning of the term, in which the auditor independently verifies that the expenditures claimed were actually made rather than accepts the representations of the union."[6] See *KGW Radio*, supra, 327 NLRB at 477. Alternatively, the Board stated that dues reduction information provided by a local union to a charging party can be based on a "local presumption," which permits a local union to presume that its allocation of chargeable and nonchargeable expenses is the same as that of its international affiliate.[7] Id. at 477 fn. 15.

We initially conclude that the judge properly addressed the unalleged issue of whether the Respondent provided sufficiently verified expenditure information to Barrett on May 11. Under well-established precedent, the Board may find and remedy a violation in the absence of a specific complaint allegation if the issue is closely connected to the subject matter of the complaint and has been fully litigated. See, e.g., *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). The complaint allegation involves the Respondent's failure to explain a perceived discrepancy in the expenditure information it provided to Barrett. The unalleged issue addressed by the judge is closely connected to this allegation. Specifically, whether there was a discrepancy in the information the Respondent provided to Barrett is subsumed by the more basic question of whether the Respondent provided her sufficiently verified information, consistent with *California Saw* and *KGW Radio*. In addition, the parties litigated this fundamental issue at the hearing. Much of the witnesses' testimony centered around the verification of the expenditure information, and counsel for both parties focused on the verification issue in their arguments to the judge. We thus find that the judge properly considered the unal-

beginning January 2008, Barrett's dues were calculated using the International's chargeable expense rate, which, at that time, was 85 percent.

[5] It is undisputed that the International Union's financial statement provided to Barrett on May 11 was sufficiently verified under *California Saw* and *KGW Radio*.

[6] "Audit" describes a "service performed by which an accountant undertakes an independent verification of selected transactions within the major categories of financial information presented in the accountant's report." See *KGW Radio*, supra at 476.

[7] The Respondent does not rely on a local presumption as a defense in this case.

leged issue of whether the Respondent provided Barrett with sufficiently verified expenditure information on May 11. We disagree, however, with the result he reached in doing so.

The judge found that the May 11 expenditure information the Respondent provided to Barrett satisfied the Board's verification requirements under *KGW Radio*. *KGW Radio* requires that an audit must be performed of a union's expenditure information provided to *Beck* objectors, and the auditor must independently verify that the expenditures claimed were actually made rather than accept the representations of the union. 327 NLRB at 477. The Respondent's accountant here merely reviewed the 2006 expenditure information provided to Barrett on May 11, and the accountant's report given to Barrett specifically provides that all the information in the financial statement is the representation of the Respondent's management. There is no evidence that the accountant did more than rely on the Respondent's representations in preparing the report, such as independently verifying that the expenses claimed were in fact made. It is thus clear under *KGW Radio* that the Respondent did not provide to Barrett sufficiently verified expenditure information. See supra at 476–477. Accordingly, we reverse the judge's decision and find that the Respondent violated its duty of fair representation and thus Section 8(b)(1)(A).[8]

ORDER

The National Labor Relations Board orders that the Respondent, United Food and Commercial Workers Union Local 4, affiliated with United Food and Commercial Workers Union, Butte, Montana, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Providing to nonmember objectors expenditure information that is neither sufficiently verified nor supported by a local presumption.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) For all accounting periods covered by the complaint, provide Pamela Barrett with information concerning expenditures by the Respondent (or, in the event that the Respondent relies on a local presumption, expenditures by its parent union) that has been verified by an independent auditor. If Barrett, with reasonable promptness after receiving this information, challenges the dues reduction calculation for any such accounting period, process such challenge as it would otherwise have done, in accordance with the principles of *California Saw & Knife*, 320 NLRB 224 (1995).

(b) Within 14 days after service by the Region, post at its offices in Butte, Montana, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

[8] The General Counsel also argues that the Respondent violated Sec. 8(b)(1)(A) by failing, as alleged in the complaint, to explain the discrepancy between the Respondent's and the International Union's total percentage amounts of chargeable expenses, and requests that this issue be remanded to the judge for further consideration. We find a remand unnecessary. Regardless of the Board's disposition of that issue, we would still find the more basic violation as set forth above. Thus, any additional finding of a violation on remand would be cumulative and would not materially affect the remedy.

In addition, we decline the Respondent's request that the Board modify its chargeable expense reporting requirements to be consistent with the Department of Labor (DOL) reporting requirements set forth in the DOL Form LM-2.

Further, we decline the Respondent's request to change the terminology the Board uses regarding dues objectors and to change the wording of notice postings ordered in cases in which unions prevail.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT provide to nonmember objectors expenditure information that is neither sufficiently verified nor supported by a local presumption.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide Pamela Barrett with information concerning our expenditures (or, in the event that we rely on a local presumption, expenditures by our parent union) that has been verified by an independent auditor.

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 4, AFFILIATED WITH UNITED FOOD AND COMMERCIAL WORKERS UNION

Richard Fiol, Esq., for the General Counsel.
Caren Sencer and *David Rosenfeld, Esqs.,* of Alameda, California*.,* for the Respondent.

BENCH DECISION, CERTIFICATION AND ORDER

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Whitefish, Montana, on April 29, 2008. It was orally argued that day and the attached bench decision was rendered immediately thereafter. The charge was filed on September 29, 2007, and amended on November 23, 2007, by Pamela Barrett, an individual. The complaint issued January 31, 2007. Some technical amendments to both the complaint and the answer was made at the hearing. The complaint alleges that Respondent has violated Section 8(b)(1)(A) of the Act. Respondent's answer denies the commission of any unfair labor practice.

After hearing the evidence on April 29, I determined that it was appropriate for me to issue a bench decision under Board rule Section 102.35(a)(10). Pursuant to Board Rule Section 102.45(a), I attach pages 130–140 of the transcript to this decision and certify that it (with corrections as shown), is an accurate transcription of my decision as delivered.

Based on my findings of fact, including discrediting the Charging Party's testimony that she never received Respondent's letter of May 4, 2007 (GC Exh. 3), and my conclusion of law that Respondent did not breach its duty of fair representation, I recommend the Board issue the following [1]

[Recommended Order omitted from publication.]

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(Off the record.)

JUDGE KENNEDY: On the record.

BENCH DECISION

JUDGE KENNEDY: Back on the record. The General Counsel and the Respondent, having made oral arguments covering both the factual and the legal issues in this matter have been—their arguments have been carefully considered and I am [facially] impressed with the General Counsel's Case, but on further analysis I've come to the conclusion that the General Counsel has not made the Case and I'm going to make some findings now describing why that is so.

Some of these findings are going to be pro forma and deal with the normal things that have to be seen in a conclusionary fashion. So, I'll try to do this by paragraph number and if Dave will keep me in line here with my numbering system, I'll try to do that. Okay.

1. The Unfair Labor Practice Charge was filed by Pamela Barrett on September 29, 2007 and she amended that Charge on November 23, 2007.

2. Safeway, Incorporated is a Delaware Corporation operating in Montana as a grocery chain.

3. Safeway is an Employer within the meaning of Section 2(2)2(6) and 2(7) and it's in commerce based upon the pleadings.

4. The union is a labor organization within the meaning of paragraph—Section 2, paragraph 5 of the Act and I

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apologize for the pronunciation here but I find that Nicholai B. Cocergine . . .

MR. COCERGINE: Cocergine, Your Honor.

JUDGE KENNEDY: Cocergine.

MR. COCERGINE: Yes, sir.

JUDGE KENNEDY: . . . is the President of Respondent and [its] Chief Executive Officer.

[6.] The union represents a Bargaining Unit of—would guess it'd basically be retail store employees and I'm not going to get into the specifics of it because they're set forth in paragraph 5 of the Complaint but they're retail employees employed by Safeway at its Whitefish, Montana grocery store and those employees are all covered by a Collective Bargaining Contract, which—let's see. Did I lose my number here? I think it's number 7 here anyway.

Number 6 was the Unit description here.

7. At pertinent times the Collective Bargaining Contract had a union security clause requiring membership of the employees in the union within 30 days or—for meeting a financial obligation if they didn't join the union[.] and that the—[pause]

8. That the union [expends] money that it receives as dues and fees from its membership and from the employees it represents, which are both for representational activities and some of these are for non-representational activities.

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9. On May 4th the union sent a letter to the newly-hired Barrett ~~in~~ Respondent's Exhibit 3 and I should point out that I believe that she was hired on April 7th and notified of her right to join or to become a financial core membership—a financial core member and of her rights under the *Beck* Doctrine. [The letter] also provided procedures to challenge the allocations and the calculations that might have to be made under the *Beck* doctrine.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

10. I find that Barrett received that letter as it was sent in the due course—in due course to her in the same manner that it was sent to other new hires in other Bargaining Units represented by the union.

11. About two weeks after she was hired she joined the union and signed a dues check-off form. That was 11.

12. In a May 9th letter she objected to payment of the fees and dues for non-representational purposes and requested full disclosure of verified financial expenditures.

13. By letter of May 11 the union acknowledged her resignation and said she was considered to be a dues objector.

We'll be off the record for just a moment here.

(Off the record.)

JUDGE KENNEDY: On the record.

The May 11 letter enclosed two documents, one of which was a—is in evidence as General Counsel's Exhibit 5, which is a description of the—[a] statement of expenses and

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allocations of expenses between chargeable and non-chargeable expenses for Local 4, for Respondent and that's a one-paged document.

It also included a multiple-paged document from the International Union, the parent International Union, which covered most of the same materials and had another breakout, a breakout quite similar to that seen in General Counsel's Exhibit 5. In the letter the dues membership Clerk, Jamie DeLaurentis, stated "We have included a statement of expenses and allocation of expenses between chargeable expenses and non-chargeable expenses of the UFCW, Local 4 for the year ending December 31, 2006.

Also enclosed is a statement of expenses from the United Food and Commercial Workers International Union for year ending December 31, 2005, which we received on March 19, 2007." Ms. DeLaurentis explained that the International's figures—breakdowns like this come on an unpredictable—come in an unpredictable manner, so these were the latest—this was the latest that they had—that the union had from the International.

And she described the columns A and B in those documents. The column A is the total expenses for the respective union. Column B is expenses chargeable to representational activities and column C is the non-chargeable expenses, which are not chargeable to representational activities. It is, of course,

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the column C material, which would be deducted in some fashion from the overall representational expenses.

She also stated in the letter that in her opinion or in the union's opinion the statement of expenses refer[red] to fair –- "represents fairly, in all material respects the total expenses of UFCW, Local 4 and the allocation of expenses between chargeable expenses and non-chargeable expenses for the year ending December 31, 2006. These figures are from our final third party reviewed end—reviewed year-end financials and you have a right to challenge the allocation of representational and non-representational expenses."

14. On May 16 the union sent Ms. Barrett a letter advising her that as a dues objector it had calculated her fee as—her monthly fee as being $31.50 per month.

Did I say that was number 14?

COURT REPORTER: You're on 15 now.

JUDGE KENNEDY: I'm at 15 now. Okay.

On May 29 Barrett claimed, by a letter, that she had not been provided with information sufficient for her to make—to understand the fee as it had been calculated. She asked for her procedural rights in that letter. However, I find that she had been provided with those procedural rights in [the] May 4th letter. She asked for financial disclosure for the—and for the calculations of the fee[s] yet these had been provided also in the May 11 letter and ~~the~~ GC-5, which was included in

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the letter. She also asked for a verification of the figures by an independent Certified Public Accountant. Now I want to comment on that. Such a request or a demand [in] the way it was characterized, is not an accurate statement of what the union must provide to a dues objector.

Then in that letter Ms. Barrett demanded that she be relieved of all dues obligations because in her opinion the information, which had been provided to her was insufficient. In her—[H]er statement in the letter was "If the union does not possess such financial disclosure, or if it is not provided to me, then you have no right to collect any fees from me as a condition of employment."

16. The union responded by letter of June 15 that—this again by Ms. DeLaurentis that—essentially that the union was small and had very few non-chargeable expenses and so that was the explanation for the high rate that the—of 95%, a rate that had been set forth in the—in GC-5 and it reiterated that she was getting a discount of $31.50 per month instead of the $33.00 per month charged full members.

She also noted in that letter that there had been a CPA letter included in the International's submission.

17. On December 14th the union issued Barrett a refund in the lower amount, which essentially is ~~in~~ a refund of $29.80. She refused to accept the check. I find that this refund was entirely unnecessary. It seems to have been a—based on a

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cautionary belief that somehow there might have been something wrong with its figures found in GC-5. I do not find that to be the case and I believe that General Counsel's Exhibit 5 is a fair representation and fairly provides Ms. Barrett with information on which to take further steps if she chooses. In any event, as I understand it the parties have stipulated, I guess, that Barrett refused to accept the check

18. In the December 14th transmittal letter, let's see, there was included an independent Public Accountant's review report dated December 31, 2006. That was the most recent review, which had been conducted [by] an outside agency. That firm is the Newland and Company, apparently an accounting firm in Butte, Montana.

I guess, Ms. Sencer, that the heading there under that independent Accountant's report from Newland I read that to say CPA's but it's kind of curved in the Xerox. It's hard for me to

[read] it but I guess you assert that they are indeed Certified Public Accountants.

MS. SENCER: Yes.

JUDGE KENNEDY: Okay. That's all I really need.

Now I find, though, [what] the Newland Company did on February 19, 2007 was not an audit in the generally used sense as the accountancy industry would use it. Nevertheless, it reflects this Accountant's—accountancy firm's view that there is no reason to modify the financial statements as they

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had been written and therefore, I think this is a fair statement of their assessment that things are okay with the material set forth therein and it is from that, of course, that General Counsel's Exhibit 5 was created. In this regard I observe that all financial reviews and all audits rely on material provided by the management of the enterprise being audited and indeed the Newland letter so states. They acknowledge that they are less in scope than -- in scope than an audit and, of course, they say the objective[. . .] Well[…] And they weren't suggesting they were performing an audit but they were making the review that they did and they didn't have any doubts about the accuracy of the material at that point.

So, therefore, I find that because General Counsel's Exhibit 5 is based on the material set forth in the independent Accountant's report that General Counsel's Exhibit 5 adequately did break down the types of expenditures which were made and shows the—how—shows the categories, which are chargeable to representational activities and which are not. Now, the only doubt that that would leave is whether or not the figures themselves are accurate and that is, of course, beyond the obligation of the Auditor. That is, in fact, the obligation of the union itself and the figures there may be challenged under the *Beck* Rules and that—so far as I know Ms. Barrett has not challenged these figures but she certainly has had sufficient information that she could if she chose and procedures, of

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course, have been provided to her. (I know she says she didn't receive the letter of May 4th, which describe those matters but as I said I find that she did receive it and I'm sure she can get another copy of it [and] the union would provide it for her if she requested it.)

So, therefore, in conclusion as a matter of law I find that the union has not breached the duty of fair representation regarding Barrett's—regarding Barrett by assigning to her a monthly due[s] figure of $31.50. The union's treatment here of Barrett was fair under the doctrine set forth in *Beck*, *California Saw* and *KGW Radio*.

As a final comment on this, I know that Respondent made an argument with respect to whether the NLRB's General Counsel was seeking a different level of review [than]—that required by Department of Labor regulations—when the unions file their LM2 reports annually—and I'd like to point out that I think that given the fact that the LM2's are verified by the union and that the documents themselves contain material that is later and maybe is the same as the material that's set forth in the objective breakdowns and that sort of thing, I think that sufficient verification has indeed been made that those numbers are accurate. Of course, they're in a different format, so it may be a little bit confusing but I do not find that there's anything wrong with what the union did here with respect to using those numbers or referring anybody to those

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numbers.

This is not to say that I disagree with the General Counsel when he says that the union can't put the burden on an employee to go chasing the DOL numbers. I think the DOL numbers and the documents there are publicly available but I don't think that an individual employee is obligated to go hunt them down for him or herself. Still, I don't see that holding the—that the Labor Board, under its Act, has any greater right to a higher standard of financial care than does the Department of Labor.

So, if the union meets the standard that is set forth by the Department of Labor of care with respect to the financials it has, I think, adequately verified, if you will, what needs to be verified and meets the duty of care to an employee when it meets that same level of care. I can't see why there would be any difference in that.

Now, I'm also going to comment, however, that, [this] is not really a finding that I need to make here in terms of the dismissal but I just would observe the argument—that the union's argument here is more persuasive than that of the General Counsel. All right.

That concludes my Decision and I will, as I described off the record, issue a—when the transcript becomes available I will rather quickly issue a certification of transcript and Decision and at that time anybody who chooses is free to file

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an Appeal with the Board under the normal review procedures. I will—I think we—there's a due date that comes out with the order—showing what the due date for that will be. I don't have to state it here. All right.

Does anybody think I need to be—clarify anything in any of my findings? Nobody saying [anything], I will declare the Hearing closed. Off the record.

(Whereupon, the Hearing in the above-entitled matter was closed.)