

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

# Advice Memorandum

DATE: February 28, 2003

TO : Robert H. Miller, Regional Director  
Joseph P. Norelli, Regional Attorney  
Alan B. Reichard, Assistant to Regional Director  
Region 20

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

SUBJECT: UFCW Local 648 (Safeway, Inc.)  
Case 20-CB-11846

This Section 8(b)(1)(A) case was submitted for advice on whether the Union adequately provided nonmember employees with notice of their Beck rights<sup>1</sup> where the Union printed the notice on the opposite side of its application for membership.

We conclude that the Union's method of providing Beck notice violated its duty of fair representation because the method was not "reasonably calculated to apprise the nonmember employees of their Beck rights."<sup>2</sup>

### FACTS

The parties are signatory to a bargaining agreement containing a standard union-security clause. Pursuant to a Union's request made in October 2002, the Employer discharged Charging Party employee Shaer for failure to pay required dues. The Region has already decided to issue a Section 8(b)(1)(A) and (2) complaint because the Union did not previously provide Shaer with an adequate calculation of her required dues.<sup>3</sup> Shaer also alleges that, before she became a Union member, the Union did not adequately inform her of her Beck rights. The Union responds that it did provide Shaer and other nonmember employees with proper Beck notice. The Union points out that it prints employee Beck rights on the reverse side of the top page of the

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<sup>1</sup> CWA v. Beck, 487 U.S. 735 (1988).

<sup>2</sup> California Saw and Knife Works, 320 NLRB 224, 231 at note 41 and 234 at note 55 (1995).

<sup>3</sup> See, e.g., Philadelphia Sheraton, 136 NLRB 888 (1962).

Union's application for membership, given to nonmember employees including Charging Party Shaer.

The front of Union's application for membership is printed in easily readable large, black type on a three copy form.<sup>4</sup> The front of the application does not indicate that there is any additional information printed on the back. The Beck notice is printed on the back in small, pale gray type that is difficult to read. The Beck notice also is printed only on the back of the top copy; it is not printed on the second or third copies.

Employees who choose to apply for full Union membership by completing the membership application are given the top copy. Employee applicants for membership therefore may see the Beck notice if they happened to turn over the top copy. However, if employees who do not apply for membership happened to turn over the entire application, they would not see the Beck notice. Rather, these employees would have to intentionally separate the first and second application sheets, and then look on the back of only the top copy, to try and read the small, pale gray printing of the Beck notice.

### **ANALYSIS**

In California Saw, the Board considered whether the IAM's publication of a Beck notice was insufficient and unlawful because the IAM published the notice in a newsletter that did not, on its cover, specifically alert readers that the notice was inside. In arguing a violation, the General Counsel noted that the IAM had highlighted other information on the cover of its newsletter, but had not highlighted the Beck notice and rather had "buried" it inside. A Board majority found that the IAM's publication notice was adequate and lawful even though the newsletter cover did not alert readers to its presence inside.<sup>5</sup>

The Board first noted that the IAM Beck notice was highlighted in color distinct from other text, and was set apart by a horizontal format with a highlighted outline containing the word "Notice" in bold print at the top. This particular issue of the IAM newsletter also was only 12 pages long, so that the Beck notice was "apparent from even a cursory review . . ." Id. The Board thus found that

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<sup>4</sup> It is not clear whether the two additional copies of the form are separated by carbon paper.

<sup>5</sup> California Saw, supra, 320 NLRB at 234.

the notice was not "hidden in a lengthy publication such that, without a cover notation, a nonmember employee making any reasonable perusal of the publication would likely not be alerted to the Beck policy." Id. Although the Board majority found no violation, it also note that "a publication notice method may violate the duty of fair representation if the circumstances establish that the notice is not reasonably calculated to apprise the nonmember employees of their Beck rights." Id. at note 55.

In the instant case, the Union's Beck notice was not contained in an separate, independent notice. Rather, it was printed on the back of the Union's membership application which was distributed to nonmember employees to solicit Union membership. We thus first conclude that the Union's notice was distributed to nonmembers via a method of publication analogous to the IAM newsletter in California Saw. We then conclude that the Union's Beck notice was unlawful because, unlike the IAM notice in California Saw, the Union's notice was "not reasonably calculated to apprise nonmembers of their Beck rights." Id.

Both the IAM notice and the Union's notice were contained inside a publication which did not, on its face, alert readers to the notice. However, the lawful IAM notice was printed in color, clearly set apart from other text, and thus was "apparent from even a cursory review . . ." Id. In contrast, the Union's notice was printed in small, gray type, on the back side of only the top copy of the application, such that a nonmember would likely not read it. Since the Union's notice appears "hidden" or "buried" and not "reasonably calculated to apprise," we find the notice inadequate and unlawful.

Accordingly, the Union violated its duty of fair representation by not providing nonmember employees with appropriate Beck notice. Since Charging Party Shaer was such a nonmember employee provided with this inadequate notice, the Union's attempt to enforce her union-security obligation was unlawful for this additional reason.

B.J.K.