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February 11, 2011

Chairman Wilma B. Liebman
Members Craig Becker, Mark G. Pearce, and Brian Hayes
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001



Re: Case Nos. 25-CB-8891 *et al.*; 34-CB-2631, -2632; 13-CB-18961, -18962;
8-CB-10487

Dear Chairman Liebman and Members Becker, Pearce, and Hayes:

It has come to my attention that Raymond J. LaJeunesse, Jr., Vice President and Legal Director of the National Right to Work Legal Defense Foundation, Inc., recently submitted a letter to the Board regarding the above numbered cases. His letter was initially sent *ex parte*. He later sent a second version of his letter, this time with copies to the undersigned, as well as other affected parties.

I represent the Respondents in one of the above referenced cases, *Communications Workers of America/Communications Workers of America Local 4309 ("CWA") and AT&T Teleholdings, Inc., d/b/a AT&T Midwest and Ohio Bell Telephone Company (Ilias)*, Case No. 8-CB-10487, JD-01-09 (hereinafter "*Ilias*"). This letter is addressed only to the *Ilias* case. The *Ilias* case is currently pending before the Board. All briefs have been filed.

In his letter, Mr. LaJeunesse suggests that the *Ilias* case, among others, is factually and legally identical to the *International Ass'n of Machinists (L-3 Communications Aero Tech LLC)* (hereinafter, *Prime*), 355 NLRB No. 174 (2010). He goes on to assert that deciding these cases (i.e. *Ilias* and the others) should be an easy matter for the Board after *Prime*, and urges the Board to do so promptly.

I cannot speak for the other cases. But the *Ilias* case is not at all identical to *Prime*. *Ilias* is both legally and factually distinguishable from *Prime*. As the Board noted in *Prime*, each union's *Beck* procedures must be considered on a case by case basis. *Prime*, at 1.

One fact critical to the Board's decision in *Prime* was that Mr. Prime expressly stated in writing that his *Beck* objection should be treated as continuing from year to year. *Prime*, at 1. Because of that fact, the Board distinguished *Prime* from *Abrams v. Communications Workers*, 59 F.3d 1373, 1381 (D.C. Cir. 1995). The *Abrams* Court relied on the proposition that dissent "is not to be presumed – it must affirmatively be made known to the Union by the dissenting party", citing *Machinists v. Street*, 367 U.S. 740, 774 (1961); *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 306 fn. 16 (1986); *Abood v. Detroit Board of Education*, 431 U.S. 209, 238 (1977); *Railway Clerks v. Allen*, 373 U.S. 113, 119 (1963). For the Board the factor that distinguished *Prime* from *Abrams* as to this proposition was the fact that Mr. Prime "not only made his objection known, but expressly stated in writing that he wished it to be a continuing objection." *Prime*, at 6. By contrast no evidence was introduced that Ms. Ilias expressly informed the CWA in writing (or otherwise) that she intended her objection to continue from year to year.¹ Thus, *Ilias* is clearly distinguishable from *Prime*.

In addition, in *Prime*, the Board also expressly limited its remedy, so that it would have only prospective application. *Prime*, at 1 and 8. To come to this conclusion about its remedial reach the Board reasoned that:

In light of consistent court approval of the requirement under the Act, the lack of any contrary indication by the Board, and the General Counsel's previous advice approving the requirement, the Unions could reasonably have believed that the requirement may be permissible if properly justified or if the burden imposed on potential objectors is further minimized by other features of the union's *Beck* procedures. We accordingly decline to give retroactive application to our ruling. *Id.*, at 8 (footnotes omitted).

Shortly after the Board issued its decision in *Prime*, CWA revised its *Beck* objector policy in order to be in full compliance with *Prime*. CWA's former policy required objections to be renewed annually. That is no longer the case. The current policy allows for continuing objections. A copy of both the old policy and the new policy are enclosed. (They are marked as Exhibits A and B respectively.)² Thus, in this case there is even less need for a retroactive remedy than there was in *Prime*. The change in policy contemplated by *Prime* has already been effectuated by CWA. This change effectively renders the issue moot.

For the foregoing reasons we agree with Mr. LaJeunesse in at least one respect. Based on *Prime* the Board is in a position to rule on the *Ilias* case. While we believe the decision that ought to be reached is precisely the opposite of what Mr. LeJeunesse is urging, we respectfully urge the Board to render a decision by distinguishing this case from *Prime* and, thereby, overturning the decision of the Administrative Law Judge.

¹ In fact, Ms. Ilias' letter not only makes no mention that she intends her objection to continue from year to year, but cites *Abrams*, thus, suggesting just the opposite. (General Counsel Exhibit 6)

² Exhibit A is part of the record in this case as General Counsel Exhibit 3. Exhibit B obviously was not part of the record since it had not yet been adopted when the hearing took place.

Respectfully submitted,



Theodore E. Meckler
CWA District 4 Counsel

Attorney for Respondents
CWA and CWA Local 4309

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afl-cio/OPEIU#2

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that true copies of this letter were sent by First Class U.S. Mail on February 11, 2011 to the representatives of the other parties in this case listed below:

Raymond J. LaJeunesse, Jr. and John C. Skully
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160

Frederick Calatrello and Susan Fernandez
National Labor Relations Board
Region 8
1240 East 9th Street, Room 1695
Cleveland, Ohio 44199



Theodore E. Meckler
Attorney for Respondents CWA and CWA
Local 4309

Notice Regarding Union Security Agreements and Agency Fee Objections

As a general matter, employees covered by a collective bargaining agreement containing a union security clause are required, as a condition of employment, to pay an agency fee equal to normal union dues and, where applicable, initiation fees. While the wording of these clauses is not perfectly uniform, none requires more than the payment of this agency fee to retain employment.

The Communications Workers of America policy on agency fee objections is the union's means of meeting its legal obligations to employees covered by union security clauses and of effectuating those employees' legal rights as stated in the applicable decisions of the U.S. Supreme Court, including *CWA v. Beck*, and the companion lower court and labor agency decisions. Under the CWA policy, employees who are not members of the union, but who pay agency fees pursuant to a union security clause, may request a reduction in that fee based on their objection to certain kinds of union expenditures.

The policy provides an objection period each year during May, followed by a reduction in the objector's fee for the 12 months beginning with July and running through June of the following year.

Briefly stated, CWA's objection policy works as follows:

1. The agency fee payable by objectors will be based on the union's expenditures for those activities or projects "germane to collective bargaining, contract administration, and grievance adjustment" within the meaning of applicable U.S. Supreme Court decisions.

Among these "chargeable" expenditures are those going for negotiations with employers, enforcing collective bargaining agreements, informal meetings with employer representatives, discussion of work-related issues with employees, handling employees' work-related problems through the grievance procedure, administrative agencies, or informal meetings, and union administration. In the past, approximately 72-79 percent of the international union's expenditures have gone for such activities. The percentages of local union expenditures on "chargeable" activities have generally been higher.

Among the expenditures treated as "nonchargeable," which objectors will not be required to support, are those going for community service (including participating in charitable events), legislative activity, cost

of affiliation with non-CWA organizations, support of political candidates, participating in political events, recruitment of members to the union, and members-only benefits (including members-only social events). In the past, approximately 21-28 percent of the international union's expenditures have gone for such "nonchargeable" expenditures. The percentages of local union expenditures on "nonchargeable" activities have generally been lower.

2. Objectors will be given a full explanation of the basis for the reduced fee charged to them. That explanation will include a more detailed list of the categories of expenditures deemed to be "chargeable" and those deemed to be "nonchargeable," and the independent certified public accountants' report showing the union's expenditures on which the fee is based. In addition to any other avenue of relief available under the law, objectors will have the option of challenging the union's calculation of the reduced fee before an impartial arbitrator appointed by the American Arbitration Association, and a portion of the objector's fee shall be held in escrow while he or she pursues that challenge. Details on the method of mak-

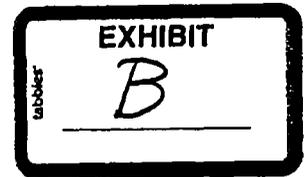
ing such a challenge and the rights accorded to those who do so will be provided to objectors along with the explanation of the fee calculation.

3. Objections for the period of July through June must be sent during May. In addition, agency fee payers who are new to the bargaining unit may object within 30 days of receiving this notice, and employees who resign union membership may object within 30 days of becoming an agency fee payer. Employees filing late objections for either of these two reasons should so indicate in their letter of objection. New bargaining unit members are to receive this notice prior to any demand being made upon them for the payment of agency fees. If, however, for any reason a new unit member begins paying agency fees prior to the receipt of this notice, he or she may object retroactively to the commencement of such payments and for the duration of the current annual objection period.

The letter of objection should include name, address, Social Security number, CWA Local number, and employer.

Objections must be sent to the Agency Fee Administrator, CWA, 501 Third Street, NW, Washington, DC 20001-2797.





Your Rights With Respect to Union Representation, Union Security Agreements and Agency Fee Objections

FAIR REPRESENTATION

The Communications Workers of America (CWA) has been chosen through the democratic processes provided by the National Labor Relations Act or the Railway Labor Act as the exclusive collective bargaining representative for this workplace. CWA negotiates and enforces the contract with your employer that sets the terms and conditions of your employment. A copy of that contract is available from your Union representative.

In most locations there will be a CWA steward on the job as your Union representative. Your CWA steward is a fellow worker who has been specially trained to help you understand your contract rights. If you believe the contract has been violated, the CWA steward or representative is the person you should contact. If the problem cannot be handled informally, the first step in securing a remedy is the filing of a grievance. Where a grievance is not resolved through discussions with management, the contract permits it to be resolved by a neutral arbitrator.

Any employee who is faced with possible adverse action by management has the right to Union representation at disciplinary interviews. If you are called into an interview that you believe could lead to discipline against you, be sure to tell whoever calls you to the interview that you want to have a Union representative present.

UNION MEMBERSHIP

CWA has a membership of 700,000 working men and women throughout the country. The Union is an organization of your fellow workers who have come together to improve their terms of employment and protect their rights on the job. Within CWA all decisions are made democratically, either by the members directly in Local meetings or by the members' elected representatives at conventions and Executive Board meetings. The officers, chosen by the Union members in elections every three years, are Union members themselves, and either now work or recently worked in places like the one where you are employed.

You have the right to join CWA and to fully participate in its affairs. The rights of Union members are spelled out in the CWA Constitution and in your Local's bylaws. These are available from your CWA representative.

You also have the right not to join CWA. If you do not join, you will be fairly represented. But you will not have the right to participate in the election of the officers who represent you on the job or to participate in meetings where Union decisions are made.

Negotiating and enforcing your contract are costly endeavors. To spread these costs fairly, those employees who do not join the Union are still required to pay an agency fee. The non-member's fee is generally equal to the dues paid by members. Those non-member agency fee payers with conscientious religious objections to financially supporting a labor organization may arrange to make charitable contributions equal in amount to Union dues instead of paying the agency fee to the Union. In addition, those non-member agency fee payers who conscientiously oppose the Union's efforts in non-collective bargaining areas such as charitable fund-raising, lobbying to improve terms of employment, and organizing to prevent your employer from being undercut by competitors paying substandard wages, may file an objection in accord with the policy on agency fee objections.

UNION SECURITY AGREEMENTS

As a general matter, employees covered by a collective bargaining agreement containing a Union security clause are required, as a condition of employment, to pay an agency fee equal to normal Union dues (and, where applicable, initiation fees). While the wording of these clauses is not perfectly uniform, none requires more than the payment of this agency fee to retain employment.

AGENCY FEE OBJECTIONS

The Communications Workers of America policy on agency fee objections is the Union's means of meeting its legal obligations to employees covered by Union security clauses and of effectuating those employees' legal rights as stated in the applicable decisions of the United States Supreme Court (including *Beck v. CWA*) and the companion

lower court and labor agency decisions. Under the CWA policy, employees who are not members of the Union, but who pay agency fees pursuant to a Union security clause, may request a reduction in that fee based on their objection to certain kinds of Union expenditures.

The policy provides an objection period each year during May, followed by a reduction in the objector's fee for the twelve months beginning with July and running through June of the following year.

Briefly stated, CWA's objection policy works as follows:

1. The agency fee payable by objectors will be based on the Union's expenditures for those activities or projects "germane to collective bargaining, contract administration, and grievance adjustment" within the meaning of applicable United States Supreme Court decisions.

Among these "chargeable" expenditures are those going for negotiations with employers, enforcing collective bargaining agreements, informal meetings with employer representatives, discussion of work-related issues with employees, handling employees' work-related problems through the grievance procedure, administrative agencies, or informal meetings, and Union administration. In the past, approximately 70-75% of the International Union's expenditures have gone for such activities. The percentages of Local Union expenditures on "chargeable" activities have generally been higher

Among the expenditures treated as "nonchargeable," which objectors will not be required to support, are those going for community service (including participating in charitable events), legislative activity, cost of affiliation with non-CWA organizations, support of political candidates, participating in political events, recruitment of members to the Union, and members-only benefits (including members-only social events). In the past, approximately 25-30% of the International Union's expenditures have gone for such "nonchargeable" expenditures. The percentages of Local Union expenditures on "nonchargeable" activities have generally been lower.

2. Objectors will be given a full explanation of the basis for the reduced fee charged to them. That explanation will include a more detailed list of the categories of expenditures deemed to be "chargeable" and those deemed to be "nonchargeable," and the independent certified public accountants' report showing the Union's expenditures on which the fee is based. In addition to any other avenue of relief available under the law, objectors will have the option of challenging the Union's calculation of the reduced fee before an impartial arbitrator appointed by the American Arbitration Association, and a portion of the objector's fee shall be held in escrow while he or she pursues that challenge. Details on the method of making such a challenge and the rights accorded to those who do so will be provided to objectors along with the explanation of the fee calculation.

3. Objections for the period of July through June must be sent during May. Objections will be honored for one year unless the objection specifically states that it is continuing in nature. Continuing objections will be honored for as long as the agency fee payer remains in the bargaining unit. Agency fee payers who are new to the bargaining unit, or who are returning to the bargaining unit, may object within thirty days of receiving this notice. In addition, employees who resign Union membership may object within thirty days of becoming an agency fee payer. Employees filing these objections in either circumstance should so state that circumstance in their letter of objection. New bargaining unit members are to receive this notice prior to any demand being made upon them for the payment of agency fees. If, however, for any reason a new unit member begins paying agency fees prior to the receipt of this notice, he or she may object retroactively to the commencement of such payments and for the duration of the current annual objection period.

The letter of objection should include name, address, social security number, CWA Local number, and employer. Objections must be sent to the Agency Fee Administrator, CWA, 501 Third Street, NW, Washington, DC 20001-2797.

Revised September 2010