

**Communications
Workers of America**
AFL-CIO/CLC
district4.cwa-union.org

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Seth Rosen
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May 9, 2011

Lester Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

Re: *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 (Charging Party Sanda Ilias)*, Case No. 8-CB-10487, JD-01-09 (hereinafter “*Ilias*”)

Dear Mr. Heltzer:

I represent the Respondents in the above referenced case. Raymond J. LaJeunesse, Jr., Vice President and Legal Director of the National Right to Work Legal Defense Foundation, Inc., submitted a letter to the Board regarding this case and others dated January 11, 2011. His letter was sent *ex parte*. You wrote back to him on January 13, 2011 returning the *ex parte* letter. On January 24, 2011 Mr. LaJeunesse, Jr. sent a second version of his letter, this time with copies to the undersigned, as well as representatives of the other affected parties. On February 11, 2011 we sent a letter to the Board responding to the issues raised by Mr. LaJeunesse, Jr. as to this case. This case is still pending with the Board.

On August 27, 2010 the Board issued its decision in *International Ass’n of Machinists (L-3 Communications Aero Tech LLC)* (hereinafter, *Prime*), 355 NLRB No. 174 (2010). We noted in our letter that shortly after the Board issued its decision in *Prime* that CWA revised its *Beck* objector policy in order to be in full compliance with *Prime*.

CWA’s old policy called for *Beck* objections to be renewed annually. That is no longer the case. The revised policy clearly allows for continuing objections. A copy of both the old policy and the new policy were enclosed with our February 11th letter and marked as Exhibits A and B respectively. We submitted these exhibits to show that in this case there is even less need for a retroactive remedy than there was in *Prime* since the change in policy contemplated by *Prime* has already been effectuated by CWA. Soon after the policy was revised it was posted on CWA’s website and contained in the CWA Constitution booklet which is available on line. (Exhibit 1) This policy change effectively renders the issue moot.

CWA annually serves notice of its *Beck* objector policy by including a statement of the policy in its Spring Newsletter which is sent to all bargaining unit employees it represents. On April 13, 2011 John C. Scully, the charging party’s attorney in this case, also with the National Right to Work Legal Defense Foundation, Inc., sent a letter to the Board pointing

out that the CWA Spring 2011 Newsletter actually contained the old policy statement, not the revised policy statement. Mr. Scully was correct in this assertion. But that is hardly the whole story.

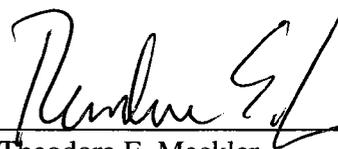
The Spring 2011 CWA Newsletter did contain the old policy statement rather than the revised policy statement. (Exhibit 2) This was due to an editing error by the vendor CWA employs to print the Newsletter. This error was not noticed by CWA until after the Newsletter had been sent out.

Upon discovering this error CWA took quick action to correct the error. It sent separate notices of its revised policy to all private sector agency fee payers, including the instant charging party. It also extended the window period for filing objections until the end of June, rather than the end of May. (Exhibit 3) An affidavit from Helen Gibson ("Gibson") who runs CWA's Office of Special Programs, is enclosed.¹ Gibson clarifies what occurred with respect to this issue. There is simply no need to impose any retroactive remedy.

In addition, this case is clearly distinguishable on its facts from *Prime*. The factor that distinguished *Prime* from *Abrams v. Communications Workers*, 59 F.3d 1373 (D.C. Cir. 1995) for the Board was 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 in this case, 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.² Thus, this case is clearly distinguishable from *Prime*.

For the foregoing reasons and those mentioned in our February 11th letter, we agree with charging party in at least one respect. Based on *Prime* the Board is in a position to rule on the *Ilias* case. However, we believe the decision that ought to be reached is precisely the opposite of that which charging party 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. Thank you for your consideration.

Respectfully submitted,



Theodore E. Meckler
CWA District 4 Counsel

Attorney for Respondents
CWA and CWA Local 4309

¹ A copy of Gibson's affidavit is enclosed. The original of same will be supplied in the near future after it has been received by the undersigned.

² 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's Hearing Exhibit 6)

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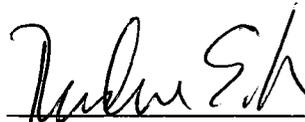
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that true copies of this letter were sent by First Class U.S. Mail on May 9th, 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

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IN THE DISTRICT OF COLUMBIA

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AFFIDAVIT

I, Helen Gibson, after first being duly sworn according to law hereby depose and say the following:

1. I am the administrator of the Office of Special Programs of the Communications Workers of America, AFL-CIO ("CWA") employed in the Secretary-Treasurer's office at the CWA's headquarters in Washington, D.C.
2. One of my responsibilities is to oversee the operation of the Special Programs Office which includes administration of CWA's internal procedure for accommodating objections of agency fee payers.
3. I have worked in the CWA headquarters for 30 years.
4. My experience and present duties give me general knowledge and overview of the CWA's personnel and operations.
5. By virtue of my position within CWA, I have personal knowledge of the matters discussed in this affidavit.
6. After the Board issued its decision in *International Ass'n of Machinists (L-3 Communications Aero Tech LLC)* (hereinafter, *Prime*), 355 NLRB No. 174 (2010), CWA revised its policy statement regarding the objections of agency fee payers.
7. A statement of the revised policy is contained in the CWA Constitution booklet and available on line at the CWA website. This revised policy statement has been so available since about the Fall of 2010.

8. The key change in the revised policy is that in compliance with *Prime*, it now clearly states the following: "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." (See paragraph 3 of Exhibit 1.) This is the policy CWA now follows.

9. CWA sends an annual notice of its policy concerning the objections of agency fee payers to all bargaining unit members it represents. This includes all private sector agency fee payers. The annual notice is contained in the Spring issue of the CWA News.

10. When the copy for the Spring 2011 issue of the CWA News was sent to the production company, it included the revised statement of policy.

11. Unfortunately, for reasons unbeknownst to CWA, the production company included the old version of this policy statement in the News rather than the revised version. (See Exhibit 2.)

12. CWA did not notice this editing error by the production company until after the Spring 2011 issue of the CWA News had been sent out.

13. After discovering this editing error, CWA took quick action to correct it.

14. All private sector agency fee payers were sent separate copies of the revised policy statement on or about May 3, 2011. (See Exhibit 3.) The charging party in this case was one of those agency fee payers who was sent a copy of the notice in this way. In addition, I personally sent a copy of the revised policy to her.

15. The notice of the revised policy includes an italicized statement at the bottom explaining the prior editing error.

16. In addition, CWA extended the annual window period for objections from the end of May until the end of June, 2011. This fact was also noted in the italicized portion of the policy statement.

17. I have read this affidavit and it is true and correct to the best of my ability and belief.

Further affiant sayeth not.



HELEN GIBSON

Sworn to and subscribed before me on this 9th day of May, 2011.



NOTARY PUBLIC

Pamela R. Oxley
Notary Public, District of Columbia
My Commission Expires 11/30/2013

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- 3. The Executive Board shall base its decision upon the record of the matter, including such statements as may be filed by the grievant(s), the Local, the Vice President or the President, and any other facts that may be developed.
- 4. There shall be no right to appear personally before the Union Executive Board, except at the invitation of the Executive Board.
- 5. Interested parties shall be notified in writing of the decision and action of the Executive Board.
- 6. The decision of the Executive Board on an appeal by a grievant shall be final and the grievant shall have no further right of appeal.
- 7. The decision of the Executive Board may be appealed by a Local or the Vice President to the next Convention in accordance with the provisions of Article VII, Section 1, Paragraph (b) of the Constitution.

Motion: Move that the appeals procedures as amended be adopted. Adopted: By the CWA Executive Board, March 7, 2004.

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(http://www.domain.com//pages/cwa_constitution/#top)

Notice Regarding Union Security Agreements and Agency Fee Objections

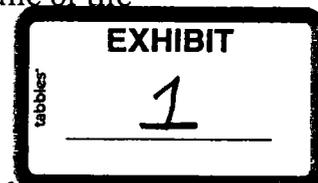
As a general matter, employees covered by a collective bargaining agreement containing a union security clause are required, as a condition of employment, to pay an agency fee equal to normal union dues (and, where applicable, initiation fees). While the wording of these clauses is not perfectly uniform, 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 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 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



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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 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 25-30 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 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.

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The letter of objection should include their 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.

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(http://www.domain.com/pages/cwa_constitution/#top)

CWA Policy on Discrimination

The CWA Policy on Discrimination is as follows:

1. The Communications Workers of America reaffirms its commitment as a matter of principle and policy that all forms of discrimination, for whatever reason, be vigorously opposed until all vestiges of discrimination are eliminated from society.
2. Freedom from discrimination within our Union is a right and privilege of all CWA members. Any abridgement of this right and privilege shall be subject to a complaint under the CWA Internal Appeals Procedures and should be investigated immediately without fear of reprisal and retaliation.
3. In restating our policy for conduct within our Union, it is equally important that our employers reflect this policy so that neither the Company nor the Union shall unlawfully discriminate against a person on account of race, color, gender, religion, age, marital/parental status, political beliefs, sexual orientation, gender identity or expression, national origin, or because a person is handicapped, a disabled veteran, or a veteran of the military service. This means what it says: "No form of Discrimination will be tolerated at any level of CWA."
4. Any matter which relates to the field of discrimination should be immediately and appropriately handled by the appropriate level of the Union that comes across the allegation of discrimination. It should be handled thoroughly in an honest and positive manner.
5. It is a matter of principle that no one member is more equal than another. The handling of the representation of our members at all levels of CWA should be done in an evenhanded way with no fear; no preference; no favorites.
6. Local Equity and Women's Committees can play a positive role by providing continuous education training assistance and by reporting to the members of the Local on the ways and means of eliminating discrimination in its entirety.
7. CWA Constitutional Committees should be representative of the Union. Local CWA Constitutional Committees should be representative of all the Local membership and should be active committees, not paper committees.

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Local 7076's 4,000 members don't have full collective bargaining

"In Tennessee, we have a Republican governor and large Republican majorities in the House

dynamic organization of higher education staff and faculty, even without collective bargaining rights.

and with all workers who are being attacked, because when they get hurt, it hurts all of us."



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 United States 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 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 72-79% 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% 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. In addition agency fee payers who are new to the bargaining unit may object within thirty

days of receiving this notice, and employees who resign Union membership may object within thirty 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.

EXHIBIT

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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

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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.

Due to an editing error, the prior year's notice was published in the Spring issue of the CWA News. This is the current notice for 2011-12. To address any concerns about the objector policy, CWA is extending the annual window period for filing objections through the end of June 2011.

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Lester Heltzer, Executive Secretary
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