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**International Union, United Automobile, Aerospace & Agricultural Implement Workers of America Local Union #376 (Colt's Manufacturing Company, Inc.) and George H. Gally.**

**International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (New York University) and Solo J. Dowuona-Hammond.** Cases 34–CB–2631, 34–CB–2632, and 34–CB–3025 (formerly 2–CB–20730)

May 27, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE  
AND HAYES

The issue in this case is whether, in the context of their *Beck* procedures<sup>1</sup> as a whole, the Respondent Unions' rule requiring potential objectors to renew their objections on an annual basis violates the duty of fair representation.

We recently addressed this aspect of our *Beck* jurisprudence in *Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB No. 174 (2010), where we found an annual renewal rule unlawful. We emphasized, however, that we would evaluate such requirements on a case-by-case basis to determine “whether the union has demonstrated a legitimate justification for an annual renewal requirement or otherwise minimized the burden it imposes on potential objectors.” *Id.*, slip op. at 1.<sup>2</sup>

In this case, for the reasons explained below, we find that the burden imposed on potential objectors under the Unions' *Beck* procedures is so minimal that the annual renewal rule here cannot be held to violate the duty of fair representation.<sup>3</sup>

<sup>1</sup> See *Communications Workers v. Beck*, 487 U.S. 735 (1988).

<sup>2</sup> Member Pearce joined the majority in *L-3 Communications* in finding that the appropriate legal framework for analyzing whether a union's annual renewal rule violated Sec. 8(b)(1)(A) was the duty of fair representation. He would have dismissed the complaint, however, finding that the union's rule in *L-3* was not arbitrary, discriminatory or undertaken in bad faith. Although Member Pearce adheres to his dissent, he agrees with Chairman Liebman that this case is factually distinguishable from *L-3*, and that dismissals of the instant complaints are warranted under the majority's analysis in *L-3*.

<sup>3</sup> On July 20, 2007, the Board issued an order denying the General Counsel's motion and the Unions' cross-motion for summary judgment, and remanding the case for trial. On March 3, 2008, Administra-

I. BACKGROUND

A. The UAW's *Beck* Objection Procedure

The Respondent Unions, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and UAW Local Union #376, inform all represented employees, on an annual basis in the UAW bimonthly magazine for July–August, of the Unions' centralized procedure for the exercise of *Beck* rights. This magazine notice specifies the percentage of dues reduction to which objectors will be entitled for the 12-month period running from August through the following July. The notice also explains that a non-member can file a *Beck* objection in writing at any time, by regular mail or hand delivery, but that an objection must be renewed after 1 year to maintain objector status without interruption.<sup>4</sup>

When a *Beck* objection is received, the UAW acknowledges receipt by letter. The letter states the reduced percentage of dues the objector must pay for the year, encloses the most recent annual financial report on how the reduction for the current year was calculated, and confirms that the objector's dues will be reduced by the appropriate amount. The letter also informs the objector that his objection will expire after 1 year (specifying the expiration date prominently at the head of the letter), but that the objection will be open to renewal in writing during the 30-day period before expiration.

At about the same time this acknowledgement letter is sent to the objector, the UAW sends a corresponding letter of instruction to the objector's employer, authoriz-

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ative Law Judge Joel P. Biblowitz, issued the attached decision. The Unions filed exceptions and a supporting brief, the Charging Parties filed exceptions and a supporting brief, the General Counsel filed a reply brief to both sets of exceptions, and the Charging Parties filed an answering brief to the Unions' exceptions. On July 22, 2010, the Board denied the Unions' motion to reopen the record to present new evidence. The Unions and the Charging Parties all filed supplemental briefs addressing our decision in *L-3*, supra.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

Member Becker previously declined to recuse himself from this case in response to the Charging Party's motion, which was grounded on the identity of the Charging Parties' counsel. See *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB No. 40, slip op. at 5–13 (2010). Subsequently, Member Becker recused himself sua sponte and took no part in the case, pursuant to 5 CFR § 2635.502(b)(1)(iv) and Executive Order 13490, Secs. 1 and 2, on the grounds that an employee of one of his former employers represents the Respondent in this case.

<sup>4</sup> At least since 2007, the same information has been posted on the UAW's website, under the link “Union Security Agreements.”

ing the dues reduction and noting that the employee's objector status will extend for 12 months. A copy of this letter is also sent to the objector.

In May or June of each year, the UAW completes its annual financial report to objectors, recalculating the *Beck* dues reduction on the basis of the Unions' expenditures over the previous year, to be effective for the next 12-month, August–July period.<sup>5</sup> This report is mailed to all current objectors in June or July, with a cover letter re-flagging the objector's 12-month expiration date and how it may be extended.

In October 2007—i.e., after the complaint in this case was issued, but before the hearing—the UAW began the additional practice of sending a reminder letter to each objector 15 days before the end of the employee's objection year, again explaining that objection status will end on the specified expiration date unless extended in writing for another year, but also that a new objection may be filed at any time.

If an objector renews on time, an acknowledgment letter is sent to the objector, stating the new expiration date subject to renewal. If an objector fails to renew before the end of an objection year, the UAW sends a letter of notice to the employer indicating that the employee's dues withholding should accordingly be increased to the full amount. A copy of this letter is sent to the employee.

#### B. Charging Party Gally

Charging Party George Gally, an employee of Colt's Manufacturing Company, resigned from the UAW in 1985. He obtained objector status. On March 17, 2003, Gally sent a letter to the Unions stating that he wanted to renew his objection "for the next 3 years." On March 27, 2003, the Unions acknowledged his objection, but informed him that "[a]nnual renewal of your *Beck* objection is still required," and that accordingly the new expiration date for his objection would be April 1, 2004. The record does not show that Gally communicated further with the UAW, but the Unions have continued to treat him as a *Beck* objector.

#### C. Charging Party Dowuona-Hammond

Charging Party Solo Dowuona-Hammond, an employee of New York University (NYU), resigned from the UAW and from UAW Local 7902 (not named as a respondent) on May 27, 2004. His resignation letter invoked his *Beck* rights without stating a time frame. The UAW acknowledged receipt of Dowuona-Hammond's

objection on November 1, 2004, informed him of the annual renewal requirement, and treated him as an objector.<sup>6</sup>

On November 16, 2005, the UAW informed NYU by letter, with a copy to Dowuona-Hammond, that he had not timely renewed his objection and that his dues should be increased accordingly. Dowuona-Hammond again objected in writing on December 2, 2005, this time stating that he wished his objection to continue "until the UAW is decertified. . . ." On January 24, 2006, the UAW acknowledged this objection, informed him of the annual renewal requirement, and again treated Dowuona-Hammond as an objector. On January 17, 2007, the UAW informed NYU, with a copy to Dowuona-Hammond, that he had not renewed his objection and that his dues should be increased accordingly. The record contains no additional evidence of any communications between Dowuona-Hammond and the UAW.

#### D. The Judge's Findings

The complaints predicated on Gally and Dowuona-Hammond's respective unfair labor practice charges were consolidated on August 30, 2007.

The judge ultimately found that the annual renewal requirement "cannot be characterized as either onerous or overly burdensome;" that the Unions' *Beck* procedure "keeps the objectors well informed" of their annual expiration dates; and that "because of the numerous reminders that the UAW sends to them, this burden [of annual renewal] is insignificant." However, the judge found that the Unions had failed to establish a valid business purpose for the requirement.<sup>7</sup> He accordingly found that the annual requirement was arbitrary and violated the Unions' duty of fair representation and Section 8(b)(1)(A) of the Act.

## II. ANALYSIS

This case is governed by the principles set out in the Board's decision in *L-3*, supra, which issued after the judge's decision here. Applying those principles, we reach a different conclusion than the judge did.<sup>8</sup>

<sup>6</sup> The record indicates that the UAW's delay in acknowledging Dowuona-Hammond's initial objection resulted from a delay in beginning the dues-checkoff system at NYU.

<sup>7</sup> The judge also rejected the Unions' defense based on Sec. 10(b), and the Unions do not pursue that defense before the Board.

<sup>8</sup> Our dissenting colleague asserts that we are "revers[ing] course," because we find no violation in this case, in contrast to *L-3*. But our decision in *L-3* made clear that the Board would "proceed on a case-by-case basis" and was "not announcing a per se rule." 355 NLRB No. 174, slip op. at 1.

<sup>5</sup> The information in the annual financial report is provided to objectors in compliance with the requirements established in *California Saw & Knife Works*, 320 NLRB 224, 239–243 (1995), enf. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

### A. The L-3 Decision

As we explained in *L-3*, supra, the Board applies the duty-of-fair representation standard in *Beck* cases. 355 NLRB No. 174, slip op. at 2. “A union breaches its duty of fair representation if its actions affecting employees whom it represents are arbitrary, discriminatory, or in bad faith.” *Id.* at 3. An action is arbitrary, in turn, “only if, in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior is so far outside a ‘wide range of reasonableness’ as to be irrational.” *Id.*, quoting *Air Line Pilots Assn. v. O’Neill*, 499 U.S. 65, 67 (1991).

In *L-3*, the Board began its analysis of the annual renewal requirement at issue there by examining the burden it imposed on potential objectors. We concluded that the burden was “modest,” consisting of three elements:

- (1) the task of writing and mailing a written statement of continued objection each year;
- (2) the need to remember to write and mail the statement in time for delivery during the 1-month window period specified in the respondent unions’ procedures; and
- (3) “of more import,” the consequence of failing to file a timely renewal, namely the “loss of the opportunity to object for 11 months (until the renewal period recurs)” and thus the obligation to pay full dues during that period.

355 NLRB No. 174, slip op. at 4.

After determining that this burden was *not* “de minimis”—although some Federal courts had regarded it that way—the Board examined the rationales proffered by the union for the annual renewal requirement and concluded that they were not sufficient to justify the burden imposed on potential objectors. *Id.* at 4 & fn. 13.

### B. Application of L-3

Here, we conclude that the burden imposed by the annual renewal requirement, in the context of the Unions’ *Beck* procedures, is, indeed, *de minimis*. Accordingly, we need not reach the weight to be given to the Unions’ proffered justifications for the requirement.<sup>9</sup>

<sup>9</sup> Although most of the Unions’ proffered justifications for the requirement are analogous to those considered and rejected in *L-3*, the Unions here also presented empirical evidence (although limited by the judge) that a significant number of objectors change their minds after 1 year. They contend from this that the annual requirement serves the Unions’ legitimate interest in ensuring that it reduces dues only for those employees who actually wish to continue their *Beck* objections.

For this reason, we disagree with our dissenting colleague’s assertion that the union’s justification in *L-3* was “identical.” In *L-3*, the

union presented little evidence with respect to objectors changing their minds. In addition, the union argued only that the annual renewal requirement served objectors’ own interest by giving them an “opportunity” to change their minds, and solely in connection with the union’s annual *Beck* adjustment of the dues amount. 355 NLRB No. 174, slip op. at 5, 6 fn. 21.

Equally important, notwithstanding the annual renewal requirement, an objection may be filed at any time under the UAW’s system. The absence of a fixed window period for objections greatly reduces the consequences of failing to renew: an employee in that situation can regain objector status—and resume paying reduced dues—by filing a new objection immediately upon being made aware of the omission.<sup>11</sup> An objector who acts promptly, then, may be required to pay full dues for only a very brief period. Although the record does not permit a calculation of the unavoidable financial cost of failing to satisfy the annual renewal requirement, it would appear to be very small. The contrast with the *L-3* system, in which a tardy objector was required to pay full dues for another 11 months, is clear.<sup>12</sup>

In sum, the aggregate burden of the annual renewal requirement on a UAW objector is significantly less than even the “modest” burden we found to exist under the *Beck* system at issue in *L-3*. On the facts here, we conclude that the Unions’ procedures comport with the duty of fair representation.<sup>13</sup>

<sup>10</sup> Notably, under the UAW’s current system—as modified during the course of the litigation—objectors are also notified again 15 days before the date of expiration. In deciding this case, we do not give weight to that final reminder, as it did not apply to the Charging Parties.

<sup>11</sup> We do not mean to imply that a window period for filing objections is unlawful. To the contrary, as we found in *California Saw*, supra, a window period can be a permissible feature of a union’s *Beck* procedures insofar as it “facilitates prompt resolution [of objections] and leaves no doubt as to the timing or the requirement for making objections.” 320 NLRB at 236.

<sup>12</sup> In view of these distinctions, we reject our dissenting colleague’s assertion that even in this case, the burden on objectors is “substantial.” By contrast, in upholding a considerably more restrictive annual-renewal requirement (including a 1-month window), the U.S. Court of Appeals for the Seventh Circuit observed that “[l]ife is full of deadlines.” *Nielsen v. Machinists Local Lodge 2569*, 94 F.3d 1107, 1116 (7th Cir. 1996).

<sup>13</sup> As in *L-3*, the General Counsel does not allege that the annual renewal requirement was enforced in bad faith. It is not clear from the judge’s decision whether he found the annual requirement in this case to be discriminatory, as well as arbitrary. Had he done so, we in any case would reject that finding, for the reasons explained in *L-3*, 355

## ORDER

The complaint is dismissed.

Dated, Washington, D.C. May 27, 2010

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Wilma B. Liebman, Chairman

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, dissenting.

In *Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB No. 174 (2010), the Board majority set out a case-by-case framework for determining whether a union violates the Act by requiring *Beck* objectors<sup>1</sup> to renew their objections annually. Applying a highly deferential duty of fair representation standard, the majority found that the unions' imposition of an annual renewal requirement was a "modest" burden on objectors' Section 7 rights, but further concluded that the unions' proffered justifications for imposing that burden—keeping current addresses of objectors, allowing objectors the opportunity to change their minds, and relying on prior court and Board rulings permitting such renewal requirements—were insufficient to justify imposing such a burden in that case. Thus, the annual renewal requirement breached the unions' duty of fair representation and, hence, Section 8(b)(1)(A). I concurred that the requirement violated the Act, although I dissented on other grounds.<sup>2</sup>

In this case, the majority reverses course and finds that the burden imposed on objectors by an annual renewal requirement is so incidental that, even though the Unions' justifications for the requirement are the very same ones that the Board rejected in *L-3 Communications*, the

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NLRB No. 74, slip op. at 6–8, and because the burden imposed by the requirement here is de minimis.

Our dissenting colleague insists that a *Beck* objector's rights should be protected under a stricter standard predicated on Sec. 8(b)(1)(A) and Sec. 8(a)(3), rather than the duty-of-fair-representation standard. As we noted in *L-3*, 355 NLRB No. 174, slip op. at 3, no court has faulted the Board's long-established approach, and we decline to readdress that issue here. We are unpersuaded by our colleague's novel analogy between the annual renewal requirement and a coercive interrogation by an employer or a restriction on a union member's right to resign. No decision of the Board or the Supreme Court supports either analogy.

<sup>1</sup> In *Communication Workers v. Beck*, 487 U.S. 735, 745 (1988), the Supreme Court held that employees who are required to pay union dues under a union-security provision may object to paying for activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.

<sup>2</sup> *L-3 Communications*, supra, slip op. at 13.

requirement does not breach the duty of fair representation. I dissent for three reasons. First, I would find that the annual renewal requirement is arbitrary and, therefore, unlawful under the duty of fair representation analysis endorsed by the majority in *L-3 Communications*. The requirement can not simply be dismissed as de minimis. Imposing the burden of an affirmative renewal notice on *Beck* objectors, at the risk of forfeiting even for a short time their Section 7 right to refrain from subsidizing nonrepresentational union activity, is plainly and decidedly not de minimis. Therefore, because the Board has previously rejected identical proffered justifications for requiring annual renewal, the policy at issue here cannot be distinguished from the policy found unlawfully arbitrary in *L-3 Communications*. Second, I would find, contrary to the majority, that the Unions' annual renewal policy is not only arbitrary, it is unlawfully discriminatory as that term is defined in duty of fair representation cases. It clearly treats similarly situated unit employees in a disparate manner based on the exercise of Section 7 rights. Finally, as I have previously stated, I would find that the deferential duty of fair representation standard should not apply in these circumstances. The right to object to supporting a union's nonrepresentational expenditures is rooted in employees' Section 7 right to refrain from concerted activities. Union rules and policies may not infringe upon that right except to the very limited extent necessary to address the free rider concern that motivated Congress to authorize the union security exception to Section 8(a)(3)'s general prohibition against discrimination to encourage membership in a labor organization.

I. THE NOTICE BURDEN ON *BECK* OBJECTORS IS SUBSTANTIAL AND ARBITRARY

The majority finds that, because the Unions provide *Beck* objectors with several notices and reminders to renew their objection each year, and because unit employees can submit an objection at any time throughout the year, the burden on objectors is de minimis and the Board need not consider the Unions' justifications for the requirement. I cannot agree. Like the objectors in *L-3 Communications*, *Beck* objectors here still must undertake the affirmative task of writing and mailing a written statement of continued objection each year; they must remember to do so before their 1-year objector term expires; and, if they fail to timely renew their objection, they will automatically incur the obligation of paying a full agency fee, including funds for expenditures by the Unions for nonrepresentational purposes, for some period of time. Regardless of the number of reminder notices given to objectors or the open time frame for renewing a lapsed objection, the burden imposed on objectors

is still at least what the *L-3 Communications* majority characterized as “modest.” I would find such a burden “substantial,” rather than modest. Adjectival differences aside, the burden plainly is not *de minimis*. Consequently, the *L-3 Communications* analysis requires asking “whether the Unions have articulated a legitimate justification for the imposition of the burden.”<sup>3</sup> The Unions have offered none, as my colleagues effectively conceded in *L-3 Communications* when addressing the same justifications offered here.<sup>4</sup> The Unions’ annual renewal requirement is therefore an arbitrary breach of the duty of representation, and a violation of the Act.

## II. THE UNIONS’ ANNUAL RENEWAL POLICY IS DISCRIMINATORY

The majority expresses uncertainty about whether the judge found the Unions’ annual renewal requirement to be discriminatory under the duty of fair representation, but they reject such a finding in any event. In contrast, I find that the judge’s decision supports a finding that the policy was unlawfully discriminatory on its face.

In his decision, the judge finds that “the Respondents do not require yearly renewals of union membership cards, dues authorization checkoff cards or notice of resignation from the union. Yearly renewals are only required of *Beck* objectors, and the Respondents have not satisfactorily explained this inconsistency.” The “inconsistency” to which the judge refers obviously describes disparate treatment of similarly situated employees. Contrary to the *L-3 Communications* majority, this is discrimination which on its face bears the indicia of an intent to act adversely to the interests of those who have affirmatively declared their opposition to the compulsory payment of financial support for a union’s nonrepresentational activities. Furthermore, as stated, it is discrimination in regard to a matter unrelated to union membership. It seems clear to me that the judge did indeed find the Unions’ annual renewal policy to be discriminatory, and I would affirm that finding for the reasons in the

dissents in *L-3 Communications*, 355 NLRB No. 174, slip op. at 12–14.<sup>5</sup>

## III. THE UNIONS’ BURDEN ON *BECK* OBJECTORS’ SECTION 7 RIGHT TO REFRAIN FROM UNION ACTIVITY IS COERCIVE

Although I would find the automatic renewal requirement at issue here unlawful under the duty of fair representation standard, I agree with prior dissenting Board Members that this deferential standard is neither required nor appropriate for determining the legality of such a requirement.<sup>6</sup> Instead, the Board should directly address whether the annual renewal requirement, which is unrelated to a union’s representational financial interests, violates 8(b)(1)(A)’s prohibition against coercion of employees’ Section 7 rights in a manner not authorized by the union-security proviso to Section 8(a)(3).<sup>7</sup>

Section 7 grants employees a fundamental right to join or assist a union, or to refrain from doing so. In cases too numerous to list, the Board has held that an employer violates this Section 7 right by asking an employee to declare whether or not that employee supports a union. By contrast, under *Beck*, a union may require an employee to declare whether the employee wishes to provide financial support for nonrepresentational activities. That one-time intrusion on Section 7 rights is a necessary adjunct to the union’s administration of a collectively bargained union-security provision. Once the declaration has been made, however, there is no more warrant for requiring its annual renewal than there is for permitting an employer to inquire about union sympathies of unit employees every year after a union’s certification. To hold otherwise is to sanction what amounts to coercive interrogation by a union in derogation of the Section 7 right to refrain. Unions may then repeatedly require *Beck* objectors openly to assert that right *or be compelled to pay for activities they have not previously supported*. That is coercion.

<sup>3</sup> 355 NLRB No. 174, slip op. 4.

<sup>4</sup> The majority notes that the Unions presented some evidence that a significant number of objectors change their mind each year, and thus, annual renewal ensures that the Unions reduce dues only for those employees who actually wish to continue their objections. See fn. 8 above. The evidence, however, does not necessarily support the conclusion. The Unions’ numbers do not show how many employees *chose* not to renew as opposed to those who forgot to renew, those who left the unit, or those who did not renew for a variety of other reasons. Requiring objectors to renew may exclude objectors who inadvertently fail to renew. Moreover, requiring objectors to renew annually seems backwards to me. It is counterintuitive that a majority of objectors, who wish their status to remain the same, be required to give annual notice of that fact, while a minority of objectors, who wish their status to change, be required to do nothing.

<sup>5</sup> Though I will not repeat our arguments in detail, the essence of our position in *L-3 Communications* was that the annual renewal requirement is discriminatory because it treats similarly-situated employees differently. Full union members, nonmember agency-fee payers, and *Beck* objectors are all unit members under the union-security clause. Requiring only *Beck* objectors to renew their status annually while making no similar requirement of other unit members is textbook disparate treatment.

<sup>6</sup> See *L-3 Communications*, 355 NLRB No. 174, slip op. 11–12 (Schaumber concurring in part and dissenting in part), and *Office Employees Local 29 (Dameron Hospital Assn.)*, 331 NLRB 48, 52–71 (2000) (Brame concurring in part and dissenting in part).

<sup>7</sup> The majority argues that no court has faulted the Board’s application of a duty-of-fair-representation standard to *Beck*-related issues. True enough, but there is no indication that any court has been presented with the issue whether the 8(b)(1)(A) coercion standard should apply in the few *Beck*-related cases decided by the Board.

Nothing in the Supreme Court's *Beck*'s opinion or in the legislative history upon which it relies suggests that unions should be privileged to require annual renewal of objector status because of the free rider issue that the union-security proviso was meant to address. *Beck* objectors are not free riders. They pay full fare for their bargaining representative's services. When a union requires a *Beck* objector to declare annually whether he or she wishes to retain that status, it is doing so with an eye to enriching its coffers for activities unrelated to the performance of these representative services.

In *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), the Supreme Court upheld the Board's ruling that employees have a fundamental right under Section 7 to resign from a union at any time, and that Section 8(b)(1)(A) prohibits unions from placing any limitations on that right. Under a union-security provision, employees may exercise their Section 7 right to refrain from assisting a union by objecting to paying for union activities beyond those germane to collective bargaining. In my view, the Supreme Court's holding in *Pattern Makers* applies directly to employees' right to refrain from supporting nonrepresentational union activities. A union's restrictions on employees' exercise of *Beck* rights, like a union's restrictions on the right to resign, are "inconsistent with the policy of voluntary unionism implicit in Section 8(a)(3)." *Pattern Makers*, supra at 104-105.

For all of the above-stated reasons, individually and taken together, I respectfully dissent from my colleagues' reversal of the judge's decision finding that the Respondents violated the Act by requiring annual renewal of *Beck* objections.

Dated, Washington, D.C. May 27, 2011

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Brian E. Hayes,

Member

NATIONAL LABOR RELATIONS BOARD

*Thomas Quigley, Esq.*, for the General Counsel.

*Michael Nicholson and Blair Simmons, Esqs.*, for the Respondents.

*W. James Young, Esq.*, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on December 4, 2007, in Hartford, Connecticut. The Order Further Consolidating Cases, which issued on October 30, 2007, was based upon unfair labor practice charges

and amended charges that were filed by George Gally (Gally), an individual, on March 31, 2003,<sup>1</sup> July 16 and August 5 (in Cases 34-CB-2631 and 34-CB-2632), and by Solo Dowuona-Hammond (Hammond), on May 10, 2006 (in Case 34-CB-3025). The consolidated complaint alleges that Local 7902, Adjuncts Come Together, UAW (Local 7902), has a collective-bargaining agreement with New York University (NYU), that contains a union-security provision requiring all unit employees, as a condition of continued employment, to either become or remain members of Local 7902 or International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (UAW or the Respondent), or to pay an agency fee to the UAW or Local 7902 in an amount equivalent to the amount uniformly required to be paid as dues and initiation fees by those who choose to become members of the UAW and/or Local 7902. The consolidated complaint further alleges that the UAW and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local Union #376 (Local 376 or the Respondent), have a collective-bargaining agreement with Colt's Manufacturing Company Inc. (Colt's), covering certain of Colt's employees, and that this agreement contains a union-security clause requiring all unit employees to become or remain members of the UAW or Local 376. It is also alleged that the UAW, Locals 7902, and Local 376 expend the moneys collected pursuant to the union-security provisions in their contracts on activities germane to collective-bargaining, contract administration, and grievance adjustment, and on activities not germane to collective bargaining, contract administration, and grievance adjustment (nonrepresentational activities), and that at all times Local 7902, Local 376, and the UAW have maintained a procedure entitled "Agency Fee Payer Objection Administration-Private Sector," (the Procedure), that governs the reduction in dues and fees to nonmember employees who object to the payment of dues and fees for nonrepresentational activities. This Procedure requires that objections filed by nonmembers are valid for 1 year, and must be renewed annually.

Substantively (in Case 34-CB-3025), the consolidated complaint alleges that Hammond, who has, or had, been employed as a unit employee at NYU since about May 27, 2004, notified Local 7902, by letter dated May 27, 2004, that he objected to the payment of dues and fees for nonrepresentational activities, and on about October 25, 2004, UAW recognized him as an objecting nonmember pursuant to the Procedure, for a 1-year period. However, by letter dated November 16, 2005, the UAW notified Hammond and NYU that it no longer considered him an objecting nonmember pursuant to the Procedure because he failed to renew his objection, and since that date, it has failed to recognize him as an objecting nonmember, and has continued to seek from him full dues and fees as a condition of his continued employment with NYU, in violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). In similar fashion (in Cases 34-CB-2631 and 34-CB-2632) the consolidated complaint alleges that at all material times Gally has been a unit employee at Colt's and has not been a member of either the

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2003.

UAW or Local 376 and that on about February 22, 2002, they recognized him as an objecting nonmember pursuant to the Procedure for a 1-year period. However, by letter dated March 10, 2003, they notified Colt's that Gally should no longer be considered an objecting nonmember pursuant to the procedure because he had failed to renew his objection. By letter dated March 17, 2003, Gally notified the UAW and Local 376 that he objected to the payment of dues and fees for nonrepresentational activities and that his objection should be valid for 3 years. The Respondent and Local 376 responded by letter dated March 7, 2003, informing him that it recognized him as an objecting nonmember for a 1-year period expiring April 1, 2004, and that if he wished to renew his objection beyond that date, he was required to file another objection within the 30-day period prior to April 1, 2004. The consolidated complaint alleges that this requirement violates Section 8(b)(1)(A) of the Act. Respondents, in its answers, in addition to denying the substantive allegations of the complaint that the Respondents violated Section 8(b)(1)(A) of the Act by limiting *Beck* objections to a renewable 1-year period, defends, inter alia, that the allegations relating to both Gally and Hammond are barred by Section 10(b) of the Act.

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondents admits, and I find, that Colt's and NYU have each been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. LABOR ORGANIZATION STATUS

The UAW, Local 376, and Local 7902 admit, and I find, that each is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE FACTS

###### A. Issue and Background

On July 20, 2007, the Board issued an Order Denying Cross Motions for Summary Judgment and Remanding, denying General Counsel's Motion for Summary Judgment and the Respondent's Cross-Motion for Summary Judgment, finding that there were material facts in dispute. At issue is the Respondent's annual renewal policy for *Beck*<sup>2</sup> objectors. The General Counsel and the Charging Parties allege that this policy places an undue burden on the objectors, while the Respondents argue that the 1-year renewal requirement serves legitimate business purposes, and places a minimal burden on the objectors. The Board stated: "We find that factual disputes exist regarding the extent of the burden on objectors and the legitimacy of the Respondents' asserted business justification for (1) precluding objectors from asserting fixed periods for their objections (e.g., the 3-year period asserted here), and (2) requiring objectors to renew their objections annually. By litigating this issue, the parties can present specific evidence in support of their claims."

Pursuant to the Board's Order, the issue remanded is a very narrow one: can the Respondents establish a valid business justification for their requirement that objectors renew their objections on an annual basis, and the extent that the annual renewal requirement places on the objectors. The two witnesses were Gally, the Charging Party in the Colt's case, and Merrill Whitman, the most senior staff member of the UAW's legal department. Hammond did not testify or appear at the hearing and it is unclear if he is still employed by NYU. Gally's testimony was not very helpful because he remembered very little of the events. That is too surprising since his difficulties with the Respondents began about 25 years ago and even the immediate situation commenced 15 years ago. Whitman had an excellent memory and is obviously very capable and intelligent. The difficulty that I had with his testimony was that he constantly answered more than was asked, he could not answer a question succinctly, and he attempted to explain issues that were not asked of him. In addition, the Respondents attempted to present testimony and numerous documents that clearly had no relevance to the issue presented to me by the Board, including testimony of a situation that occurred 40 years ago. I rejected this evidence due to the narrow remand of the Board. A majority of the relevant information was based upon letters to and from the Respondent regarding Gally and Hammond's *Beck* status.

###### B. Gally

Gally has been employed by Colt's since about 1961, and is a member of the bargaining unit represented by the Respondents. In August 1961, he signed a union membership card and a dues-checkoff authorization card for the Union and remained a union member until resigning from the Union in 1985. He testified that during the period of his union membership, he never had to sign another membership card, or checkoff authorization card. In 1986, the Respondents commenced a strike against Colt's that lasted for approximately 4 years; Gally honored the Union's picket line for the first month and returned to work for the balance of the strike. He was fired by Colt at the request of the Union for nonpayment of union dues on April 9, 1991, and was reinstated on October 9, 1992. This situation was remedied by a Supplemental Decision and Order of the Board at 342 NLRB 64 (2004), wherein the Respondents were ordered to make him whole in the amount of \$30,773, plus interest.

On November 6, 1992, the Respondents wrote two letters to Gally briefly explaining *Beck*, stating that although he had failed to file a *Beck* objection the Union was unilaterally treating him as a nonmember objector, and stating that they determined the chargeable percentage of dues as 82.40 percent, and that, on that basis, he was obligated to pay the sum of \$22.64 monthly. The other letter of the same date again states that it is treating him as a nonunion objector, and explains the process for challenging the UAW's calculation of chargeable expenses. The letter concludes by saying that the date of expiration (DOE) of his objector status was October 6, 1993, but that he can renew his objector status for another year by notifying the Union within 30 days of that date. On that same date, the UAW notified Colt's of Gally's nonmember objector status and that if they have a dues-checkoff authorization from him they should

<sup>2</sup> *Communication Workers v. Beck*, 487 U.S. 735 (1988).

deduct the reduced amount from his pay for the next 12-month period. By letter dated June 1, 1994, the UAW wrote to Gally, notifying him of the new chargeable percentage and reminding him that his DOE was October 6, 1994, and that he could renew his objection for an additional year by notification to the UAW within the 30 days prior to that date. By letter of the same date to Colt's, the UAW notified Colt's of the new chargeable percentage. On October 17, 1996, the UAW notified Gally that they received his *Beck* objection, the percentage of chargeable expenses, of his right to challenge the percentage charged, that his DOE was October 11, 1997, and that a renewal of the objection for an additional year must be received within 30 days of that date. On the same day, a letter was sent to Colt's, notifying them of Gally's objector status, and the chargeable expense percentage. On June 25, 1997, the UAW wrote to Gally notifying him of the revised chargeable expense percentage, and again notified him that in order to renew his objector status for an additional year, his objection must be received by the UAW within 30 days of his DOE, October 11, 1997. On the same day, the UAW wrote to Colt's saying that Gally was an objecting nonmember, and informed Colt's of the new chargeable expense percentage.

By letter dated February 19, 2002, Gally wrote to the Respondents invoking his *Beck* rights, and by letter dated February 25, 2002, the Respondents acknowledged receipt of the letter and stated that any renewal for an additional year would have to be received no later than 30 days prior to the DOE, March 1, 2003. On the same date Respondents notified Colt's of his *Beck* status. By letter to Gally, dated May 30, 2002, Respondents stated that it had previously received and acted on his *Beck* objection and notified him of the revised chargeable expense percentage. On August 22, 2002, Gally wrote to the Respondents, again, invoking his *Beck* rights, and by letter dated August 26, 2002, Respondents stated that he was currently a *Beck* objector and that his renewal was premature; that he should renew his objection for an additional year within 30 days of his DOE, then March 1, 2003. On the same date, the Respondents notified Colt's of Gally's objector status, and the new chargeable expense percentage. On about March 17, Gally wrote to the Respondents stating that he wanted to renew his objection "for the next 3 years." By letter dated March 27, Respondents replied: "Annual renewal of your *Beck* objection is still required." In another letter on the same date, the Respondents notified Gally of the new chargeable expense percentage, again told him how this figure can be challenged and that the DOE was April 1, 2004, and any renewal request for an additional year must be received within 30 days of that date. On the same date, Respondents notified Colt's of Gally's renewed objection. Although there, apparently, have been no further *Beck* letters from Gally to the Respondents, he has continued to be treated as a *Beck* objector.

### C. Hammond

There is substantially less evidence in the record regarding Hammond. By letter dated May 27, 2004, Hammond wrote to Local 7902 resigning from Local 7902 and invoking his *Beck* rights. The UAW, by letter to Hammond dated November 1, 2004, stated that it received his *Beck* objection and that it noti-

fied NYU of the percentage of the dues that was to be deducted from his pay. The letter concludes that in order to renew his objection for another year, the objection must be received by the UAW within 30 days prior to his DOE, November 1, 2005, and by letter dated October 29, 2004, the UAW notified NYU of Hammond's objector status, together with the prevailing chargeable expense percentage. By letter dated June 27, 2005, the UAW informed Hammond about the updated chargeable expense percentage, his right to challenge it, and the fact that in order to renew his objection for an additional year, he must do so in writing within the 30-day period prior to his DOE, November 1, 2005. By letter to NYU dated November 16, 2005, the UAW stated, *inter alia*:

On 10/25/2004, Solo Dowuona-Hammond, a nonmember of the UAW, filed or was deemed to have filed an objection with the UAW pursuant to *Beck v. CWA*. Under UAW's objections procedures, such objections are valid for one year, but may be annually renewed.

Solo Dowuona-Hammond has **not** renewed the above reference objection. Accordingly, effective **immediately**, please **increase** the amount of moneys checked off for union fees payable by the above-referenced non-UAW member to **100 percent** of the amount of dues payable by the UAW members. [Emphasis added.]

In response, Hammond wrote to NYU on December 2, 2005, to disregard the Respondent's request that 100 percent of the dues be deducted from his pay. He also stated:

Since the UAW failed to respond to my letter of resignation, in which I invoked my *Beck* right, and failed to inform me of Beck's annual renewal requirement, it is disingenuous, at best, and downright dishonest, at worst, for the UAW to say that I failed to meet an annual renewal requirement for *Beck*. [Emphasis added.]

By letter dated January 24, 2006, the Respondents notified Hammond that it was in receipt of his *Beck* objection that it would treat him as such, that his new DOE was January 1, 2007, and that to renew his objection for an additional year he had to do so within 30 days of his DOE. On the same date, Respondents also informed NYU that Hammond was a *Beck* objector and that they should only deduct the specified percentage from his wages for the next 12 months. In July 2006, the Respondents wrote to Hammond saying that they ". . . previously received and acted on your objection as a non-UAW member pursuant to *Beck v. CWA*." The letter refers to the existing chargeable expense percentage and again concludes that he may renew his objection for an additional year by transmitting it to the Respondent within 30 days immediately prior to his present DOE, January 1, 2007. Finally, on January 17, 2007, the Respondent wrote to NYU, *inter alia*:

On 12/7/2005, Solo Dowuona-Hammond, a nonmember of the UAW, filed or was deemed to have filed an objection with the UAW pursuant to *Beck v. CWA*. Under UAW's objection procedures, such objections are valid for one year, but may be annually renewed.

Solo Dowuona-Hammond has **not** renewed the above referenced objection. Accordingly, effective **immediately**, please **increase** the amount of moneys checked-off for union fees payable by the above-referenced non-UAW member to **100 percent** of the amount of dues payable by the UAW members. [Emphasis added.]

Received in evidence was a payroll statement from NYU from January 2007 through June 29, 2007, stating that Hammond's total earnings at NYU for that period were \$2624.

#### *D. Respondent's Procedure with Beck Objectors*

Respondents' procedures in dealing with *Beck* objectors has evolved over the years since shortly after *Beck* was decided in 1988. As can be seen in sections B and C above, *Beck* objections produce a large amount of letter writing by the UAW, and a lesser amount by the objectors. The procedure begins when the individual notifies the UAW that he/she wishes to become a *Beck* objector. The Respondents, in their brief, stress the ease and lack of requirements for the objections: the letter can be sent regular mail or can be dropped off at the union office, and it can be sent at any time, there is no "window period" for filing these objections. Upon receipt of the objection, the UAW writes to the objector, confirming receipt of the objection and stating that his/her employer would be notified of the objection, as well as the percentage of the regular dues to be paid by the objectors. The letter then explains how the UAW arrived at the charged amount and the objector's right to challenge this amount. The letter also states that a report is issued yearly to the objectors, usually about May 15, explaining the calculations for the following year. The letter concludes by saying that the objection expires on the date listed at the top of the letter (the DOE) and that he/she may renew the objection "for another year" by notifying the Respondent, in writing, within 30 days of the DOE. The DOE is presently calculated as the first day of the month 12 months after the objection is received. At the same time that the Respondent sends this letter to the objector, it also send a letter to the objector's employer stating that the employee is a *Beck* objector and, if the employee has executed a dues-checkoff authorization form, the employer is to deduct only the chargeable percentage of the regular dues from the employee's earnings; a copy of this letter is also mailed to the objector. Further, beginning in October 2007, the Respondent began sending reminder letters to objectors 15 days prior to their DOE.

#### *E. Respondents' Defenses*

Respondents defend that past Board actions support the legality of its 1-year renewal requirement. On November 15, 1988, the General Counsel of the Board issued *Beck* guidelines to all Board offices. One portion of these guidelines states: "... a union can require nonmembers to file new objections, as discussed below, each year." In addition, the UAW, together with a number of its local unions, including Local 376, entered into a settlement agreement with the Board in 1992 wherein the Respondents agreed to reimburse fee payments to certain *Beck* objectors, including Gally, and to rewrite certain of its *Beck* notices. Additionally, the Respondents defend that, in 2001, during testimony before the Committee on Education and the

Workforce of the United States House of Representative on the subject of *Beck*, Arthur Rosenfeld, the General Counsel of the Board, stated: "Generally, a union may require that objections be sent to the union during a specified annual 'window period.'"

Finally, the Respondents defend that its yearly renewal requirement is needed because of the high turnover of the employees that it represents. Whitman testified that in 1992, the UAW represented in excess of 1 million employees, a large percentage of whom were employed by employers in its "core industries," such as Ford, General Motors, and Chrysler. The employee turnover rate was low for these employers because of the high pay structure and benefits in this industry. However, due to the layoffs, retirement and buyout programs that have occurred over the last few years in this industry, and related industries, the UAW now represents fewer employees in these industries, and has been successful in organizing service industries, particularly, casinos, hospitals and universities. He testified that due to the lower pay scales, these industries have a higher turnover rate of employees than the automobile and related industries. As a result, it is more difficult to obtain timely data about the employees of these employers than it was years ago when the core industries were at full employment, and, as a consequence, more difficult to learn if they are still employed. The lack of complete records in these new industries makes it difficult to keep track of these employees. It would be easier to track and locate them, the Respondents argue, if the employees were required to notify them on a yearly basis that they wished to exercise their *Beck* rights.

Respondents also defends that the allegations involving both Gally and Hammond are barred by Section 10(b) of the Act. As can be seen in sections B and C above, the large number of letters received by Gally and Hammond, always stated: "You may renew your objection in writing *for another year* within 30 days immediately prior to your DOE . . ." (Emphasis added.). After Gally wrote that he wanted his objection to be valid for a 3-year period, the UAW, by letter dated March 27, 2003, wrote him: "We have your letter of March 20, 2003. Annual renewal of your *Beck* objection is still required." By letter dated March 27, 2003, the Respondent wrote Gally that it received his *Beck* objection and that his new DOE was April 1, 2004.<sup>3</sup> Gally's unfair labor practice charges in this matter were filed March 31, July 16, and August 5, 2003. In response to Hammond's letter to NYU dated December 2, 2005, the Respondent sent Hammond its form letter, dated January 26, 2006, saying, inter alia, that it accepted his objection, his DOE was January 1, 2007, and that he could renew his objection for another year. Hammond's unfair labor practice charge was filed on May 10, 2006. Counsel for the Respondent in his brief, argues that Gally has been aware of the 1-year renewal requirement since, as early as, 1992, and Hammond was notified of the 1-year requirement in the UAW's November 1, 2004 letter, both outside the Board's 10(b) period.

<sup>3</sup> The Respondent treated Gally's 3-year request as a 1-year objection.

## IV. ANALYSIS

Two of the Respondents' defenses are clearly without merit. The fact that the Board's *Beck* guidelines issued 20 years ago approved of a yearly renewal requirement, and that General Counsel Rosenfeld testified 7 years ago approving of 1-year renewal requirements, does not constitute Board law, and are not binding on me, the Board, or the courts. *Kysor/Cadillac*, 307 NLRB 598, 604 at fn. 4 (1992); *Glendale Associates, Ltd.*, 335 NLRB 27, 34 (2001). In addition, Respondent's 10(b) defense also must fall. Respondent contends that because Gally has known of the 1-year renewal requirement since about 1992, and Hammond since 2004, both outside the 10(b) period, the complaint must be dismissed. This argument fails for two reasons. While it is true that Gally was initially informed of the 1-year renewal requirement in, or prior to 1992, that 1-year renewal requirement has been repeated, almost yearly, in the letters that the UAW has sent Gally. The final paragraph of each of these letters stated that he could renew his objection for another year by requesting the renewal in writing within 30 days of his DOE. The last such letter to Gally is dated March 27, 4 days prior to his first unfair labor practice charge and 4-1/2 months before his final unfair labor practice charge. A similar situation is true for Hammond: Respondent's final letter notifying him of the 1-year renewal period is dated January 26, 2006, and his unfair labor practice charge was filed May 10, 2006, clearly within the 10(b) period. Respondent's 10(b) defense is therefore dismissed.

Although the Board has not yet ruled upon the legality of yearly renewal requirements of *Beck* objections,<sup>4</sup> there are a number of court decisions that go both ways, and there is, at least, one decision from an administrative law judge on the subject. In *Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6th Cir. 1987), the court found this requirement "not . . . unreasonable" and lawful. Similarly, *Abrams v. Communications Workers*, 59 F.3d 1373, 1381-1382 (D.C. Cir. 1995), citing *Tierney* and *Machinists v. Street*, 367 U.S. 740, 774 (1961), stated: "The annual renewal requirement is permissible in light of the Supreme Court's instruction that 'dissent is not to be presumed-it must affirmatively be made known to the union by the dissenting employee.'" On the other hand, three courts have found the annual renewal requirement to be unlawful. In *Shea v. Machinists*, 154 F.3d 508, 515 (5th Cir. 1998), involving the Railway Labor Act, the court stated:

The current procedure is cumbersome to both the union and the objecting employees because it requires annual computer entries. If the IAM recognized continuing objections made expressly and in writing, the employee would notify the union only once and neither the union nor the individual would be bothered with annual database entries.

<sup>4</sup> Counsel for Respondent, in his brief, states: "In its *California Saw & Knife Work* decision [320 NLRB 224, 236 fn. 62 (1995)] the Board noted the General Counsel's position that an annual objection procedure is lawful with apparent approval." However, as stated by counsel for the Charging Parties in his brief, the Board merely said in that case that the requirement of annual *Beck* objections was not alleged to be unlawful in that matter.

The IAM has not proffered any legitimate reason why an annual written objection requirement is necessary when the employee has previously furnished (and not withdrawn) a continuing written objection. It seems to us that the unduly cumbersome annual objection requirement is designed to prevent employees from exercising their constitutionally-based right of objection, and serves only to further the illegitimate interest of the IAM in collecting full dues from nonmembers who would not willingly pay more than the portion allocable to activities germane to collective bargaining. Certainly the procedure that least interferes with an employee's exercise of his First Amendment rights is the procedure by which an employee can object in writing on a continuing basis . . . If the IAM could bring forth a legitimate reason why written objections must be annually renewed and cannot be continuing, then perhaps we would have to evaluate whether the infringement is reasonably necessary. But in the absence of such a reason, we hold that the annual written objection procedure is an unnecessary and arbitrary interference with the employees' exercise of their First Amendment rights.

In *Lutz v. Machinists*, 121 F.Supp.2d 498, 506 (U.S. District Court, E.D. Virginia 2000), the court stated:

. . . the annual objection requirement imposes a burden on the First Amendment rights of nonmembers, and, yet, the IAM has not offered *any* legitimate reason for such a requirement . . . As the union conceded at oral argument, what is really at stake here is whether the union can collect more money as a benefit of the decision maker's inertia. In other words, it is the IAM's hope that objecting nonmembers will either forget or overlook the annual objection requirement, or will reconsider their objection on the merits, thereby enabling the IAM to collect greater funds from nonmembers.

In sum, the annual objection requirement fails First Amendment scrutiny because the requirement is without a valid justification and imposes an undue burden that creates a risk that funds "will be used to finance ideological activities unrelated to collective bargaining." [Citing *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 305 (1986).]

In *Seidemann v. Bowen*, 499 F.3d 119, 125 (2d Cir. 2007), after discussing *Abrams*, *Tierney*, and *Shea*, the court stated:

We are persuaded by the Fifth Circuit's analysis in *Shea*, which is more in line with this Circuit's jurisprudence regarding agency fee procedures and our reading of Supreme Court precedent. Although the Supreme Court in *Street* [supra], placed the burden of making an initial objection on the employee, nothing in *Street* or the subsequent decisions of the Supreme Court suggest that merely because an employee must initially make his objection known, a union may thereafter refuse to accept a dissenter's notice that his objection is continuing . . . The fact that employees have the responsibility of making an initial objection does not absolve unions of their obligation to ensure that objectors' First Amendment rights are not burdened.

Here, PSC's annual objection requirement burdens employees exercising their constitutionally protected right to object, and

the union has proffered no legitimate need for disallowing continuing objections . . . We hold the annual objection requirement imposed by PSC in this case is an unnecessary burden on employees exercise of First Amendment rights.

Finally, on May 30, 2006, Administrative Law Judge William Kocol issued a Decision in *General Truck Drivers, Local No. 952 (Albertson's)* JD(SF)–30–60<sup>5</sup>, wherein he found the annual renewal requirement unlawful, stating:

The General Counsel and the three Charging Parties argue that such a requirement [annual renewal of *Beck* objections] is unlawful because it burdens the rights of employees who wish to continue to object to paying full membership dues. To be sure, the requirement creates an additional effort to maintain objector status. Moreover, the Union is unable to provide a sound reason justifying this encumbrance. In the absence of such an explanation, it appears that this restriction is arbitrary and designed only to discourage the exercise of a right protected by the Act. Moreover, it seems that if employees have an unencumbered right to resign from membership, so too should they have an unencumbered right to file *Beck* objections.

Pursuant to the Board's Order dated July 20, 2007, together with the court decisions cited above, the issues that need be examined are the extent that the burden of filing yearly *Beck* renewal objections has on the objectors and whether the Respondents can establish a valid or legitimate business reason that justifies the yearly renewal requirement. Of course it is a burden for the objectors to write a yearly letter to the Respondents, or to any union, renewing their *Beck* objection, although, in the instant matter, it cannot be characterized as either onerous or overly burdensome. It cannot be said that the Respondents keep the objectors in the dark as to their renewal date hoping for a "gotcha" moment that requires the objectors to pay regular dues for the next 12 months. Rather, the Respondents operate a system that keeps the objectors well informed of the expiration date of their objection. When the Respondents initially respond to the objector, they are notified of their objection date, as they are when they receive a copy of the letter notifying their employer of the *Beck* objection. Sometime in about May or June they are notified of the revised chargeable percentage, and that letter, as well, has their DOE. Further, since 2007 the Respondent has notified objectors 15 days prior to the expiration of their objection and, finally, even if they forget to renew their objection, when they receive a copy of the letter to their employer to charge the former objector the regular dues, they can immediately renew their objection as there is no "window period." I therefore find that, although there is a burden on the objectors in filing annual renewals of their *Beck* objection, because of the numerous reminders that the UAW sends to them, this burden is insignificant.

The Respondents don't do as well, however, in establishing a valid business purpose justifying the annual renewal requirement. Their rationale for the rule appears to be principally record

<sup>5</sup> After the filing of exceptions, the parties entered into a settlement agreement which was approved by the Board, so this matter never generated a Board decision.

keeping. Whitman testified that, in the past, their core industries provided a long term stable work force because of the high pay and substantial benefits. However, at the present time, a large number of the Respondent's members are employed in service industries, casinos, hospitals, and university, which have a higher rate of employee turnover. Because of employees entering and leaving covered employment at a higher rate than in the past, it is more difficult to track the names and addresses of the covered employees and to determine their employment status. By requiring *Beck* objectors to renew their objection on a yearly basis, this argument goes, the Respondents are better able to keep track of who they represent and where they live, although it is unclear if, in this defense, the Respondents are referring to all covered employees, or are only referring to the ability to track its *Beck* objectors. Either way, this argument must fall for a number of reasons. In about 1992, the Respondent had approximately 1 million members; at the present time that number is down to about 600,000. Whitman testified that, at the present time, they have about 300 *Beck* objectors, certainly a small percentage of their total members. It is unclear to me why it is so important to require yearly renewals in order to keep track of these *Beck* objectors and not the other 99.9 percent of their members. Further, the Respondents do not require yearly renewals of union membership cards, dues authorization checkoff cards or notice of resignation from the Union. Yearly renewals are only required of *Beck* objectors, and the Respondents have not satisfactorily explained this inconsistency. I therefore find that the Respondents have not established a valid business purpose justifying the annual renewal requirement, and find that it therefore violates Section 8(b)(1)(A) of the Act.

#### CONCLUSIONS OF LAW

1. Colt's and NYU have each been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The UAW, Local 376, and Local 7902 are each labor organizations within the meaning of Section 2(5) of the Act.
3. By requiring its *Beck* objectors to renew their objection yearly, the Respondents violated Section 8(b)(1)(A) of the Act.

#### THE REMEDY

Having found that the Respondents engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities, and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In that regard, I shall order that the Respondents rescind their requirement that *Beck* objectors renew their objection yearly. I shall also order Respondent to notify its existing *Beck* objectors, in writing, that they are not required to renew their objection yearly, and to notify its members of the change in the next issue of Solidarity that is mailed to its members.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

<sup>6</sup> 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.

## ORDER

The Respondents, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local Union #376, its officers, agents, and representatives, shall

## 1. Cease and desist from

(a) Requiring employees of covered employers to file annual objections to paying full membership dues.

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

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

(a) Within 30 days of the date of this decision, notify all present *Beck* objectors, in writing, that the Respondents will no longer require annual renewals of *Beck* objections.

(b) In the next issue of *Solidarity*, state that you will no longer require the annual renewal of *Beck* objections.

(c) Within 14 days after service by the Region, post at its union offices in Detroit, Michigan, and Newington, Connecticut, copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at

<sup>7</sup> 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."

its own expense, a copy of the notice to all current covered employees and/or members.

Dated, Washington, D.C. March 3, 2008.

## 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
- Choose not to engage in any of these protected activities.

WE WILL NOT require the bargaining unit employees whom we represent to file annual objections to paying full membership dues and WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their Section 7 rights.

WE WILL notify all of our present *Beck* objectors, in writing, that they are no longer required to file annual objections to the payment of the full union dues, and WE WILL notify all bargaining unit employees whom we represent, in our next issue of *Solidarity*, that they are not required to file annual objections to paying full membership dues.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW