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International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO and International Brotherhood of Electrical Workers, AFL-CIO and John Lugo. Cases 13-CB-18961 and 13-CB-18962

August 10, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER, PEARCE, AND HAYES

On December 19, 2008, Administrative Law Judge William G. Kocol issued the attached decision. The Respondents, International Brotherhood of Electrical Workers Local 34 (Local 34), and International Brotherhood of Electrical Workers (IBEW or the International), and the Charging Party, John Lugo, filed exceptions and supporting, responding, and reply briefs, and the General Counsel filed a responding brief.¹

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.

We agree with the judge that Local 34 violated its duty of fair representation and Section 8(b)(1)(A) of the Act by maintaining and enforcing a requirement that nonmember employees represented by the Union renew annually their objections filed under *Communications Workers of America v. Beck*.² In this respect, we find that the case is governed by *L-3 Communications*, 355 NLRB No. 174 (2010), which issued after the judge's decision. We find, however, that the judge erred in dismissing the complaint, sua sponte, with respect to IBEW. Contrary to the judge, we find that IBEW is jointly liable for the violation. We address these two issues in turn.

I. THE ANNUAL RENEWAL REQUIREMENT

After setting out the material facts and the parties' arguments, we explain why the annual renewal requirement here was unlawful.

¹ Pursuant to *Reliant Energy*, 339 NLRB 66 (2003), we have accepted both Lugo's postbrief letter calling our attention to recent case authority and the Unions' letter response.

² 487 U.S. 735 (1988).

A.

In nearly all material respects, the Unions' *Beck* objection procedure is similar to that at issue in *L-3*. Represented employees are obligated to pay dues (or agency fees) to their local unions pursuant to the union-security provisions in the locals' respective collective-bargaining agreements. Full dues include \$11 per month for the International and an additional amount for the local.

Pursuant to *Beck*, the Unions have a procedure—established by the International, and binding on IBEW local unions—for nonmember represented employees to object to the spending of their dues money for any purpose unrelated to collective bargaining or contract administration. Employees who send timely written objections to the International receive a proportional reduction of their dues. The procedure requires objectors to renew their objections annually with IBEW each November in order for the objection to remain effective for the following calendar year.

The International publishes an annual notice of *Beck* rights, including the annual November renewal obligation, in its October newspaper, which is mailed to all members and nonmembers who pay dues or fees. Locals provide the same information to new hires at the time they become part of a bargaining unit.³ The International informs each local of all objections and timely renewals it receives from the local's jurisdiction. When an objector's local is informed of his objection, the local sends the objector an acknowledgment and a copy of the objection procedure, referencing the November renewal requirement and enclosing a copy of the previous October notice from the International's newspaper.

In one respect emphasized by the Unions, their objection procedure differs from the one found unlawful in *L-3*. When an objector files a timely objection or renewal, the International sends him an advance refund equal to the total reduction in dues paid to the International the objector would receive if he remained employed and paid reduced *Beck* fees for the duration of the forthcoming calendar year. This advance refund permits the local to lawfully collect the same amount of monthly per capita dues to the International during that year from objectors as from nonobjectors. However, by opting for this approach the Unions run the risk of refunding too much money to objectors who leave represented employment during the year and thereby cease to be covered by an IBEW union-security clause.

³ The procedure also permits an employee to file a *Beck* objection up to 30 days after first being hired or after resigning membership and to receive a proportional dues reduction for the rest of the calendar year before becoming subject to the November renewal requirement.

IBEW's local unions have their own procedures for refunding the nonchargeable portion of their share of incoming dues. Some, including Local 34, follow the International's procedure and provide advance refunds for the year, while others ask the objectors' employers to reduce objectors' monthly deductions from the objectors' pay.

After working as an IBEW member for 14 years, Lugo resigned his membership and filed a *Beck* objection with the International on June 8, 2007, requesting that his objection be treated as "permanent and continuing [in] nature." His objection was recognized and processed and, after communication with the International that included notice of the annual renewal requirement, the International refunded the appropriate amount of his per capita dues for the period running back to his resignation date and forward to the following November. Local 34 sent a similar refund from its share of his dues for the same period. The International reminded Lugo, however, that his objection was subject to the annual renewal requirement.

Therafter, Lugo filed charges alleging that the Unions' imposition of the annual renewal requirement on him violated his Section 7 rights and the Unions' duty of fair representation under Section 8(b)(1)(A) of the Act. The General Counsel's complaint alleged the same.

With respect to the Unions' justification for the annual renewal requirement, an IBEW official who directs the Union's per capita department testified without contradiction:

We need to know that the individual still wants to receive the per capita reduction [and] that the individual is still employed and paying dues and fees. And we want to verify the individual's address. But most importantly, the up front annual reduction is, or should I say the renewal requirement is closely tied to the fact that we pay them up front. The two are interrelated and they work as one plan.

Asked to explain what he meant in referring to whether an objector "still wants to receive the per capita reduction," the IBEW official elaborated:

My experience, and I've spoken with a lot of people because they call in and ask how to do the process and the telephone calls are referred to me, my experience is that many of these people change their mind for various reasons. Either they want to be a member or they want to vote, contract, or they just want to be involved in the collective bargaining process with their peers, or they don't care to receive the payment anymore.

With respect to confirming an objector's employment status, the IBEW official said that IBEW receives the

locals' monthly per capita reports "at least one month later . . . [a]nd by the time all of the reports are received, several months have transpired. So, an individual could have left the unit and we wouldn't know about it for two to three months." He noted that "some of these people have [objected] after they retired." It would not be efficient for IBEW to attempt to obtain confirmation of continued employment and current address from the locals at the end of each year, he continued, because

we have so many different locals of so many different sizes. And people change addresses constantly. . . . So, the problem would come in with the smallest of the local unions, and these are the ones we have to be concerned with not replying to our correspondence in time to honor the individual's request.

The Unions also argue that the annual renewal requirement is justified by legal authority prior to *L-3*, which stated or suggested that the requirement is lawful.⁴

The General Counsel's complaint alleges that the Unions' annual objection renewal requirement "constitutes an arbitrary restriction on an employee's right to refrain from union membership and from supporting nonrepresentational expenditures."⁵

B.

L-3 reaffirmed that the Board applies the duty-of-fair-representation standard in *Beck* cases. (355 NLRB No. 174, slip op. at 2.) A union breaches that duty 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 *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 67 (1991). With respect to annual renewal requirements, the *L-3* Board did not "announc[e] a per se rule," but chose instead to "proceed on a case-by-case basis." *Id.* at 1. As *L-3* and our subsequent decision in *Colt's Mfg.*, 356 NLRB No. 164, slip op. at 3 (2011), illustrate, if the burden imposed on employees by an annual renewal requirement is more than de minimis, the Board evaluates a union's proffered justifications for the requirement, considered in the context of the particular *Beck* procedures involved.

1. It is clear that the annual renewal requirement at issue here, like that involved in *L-3*, and unlike that in *Colt's*, imposes more than a de minimis burden on objec-

⁴ E.g., *Abrams v. Communications Workers*, 59 F.3d 1373, 1381-1382 (D.C. Cir. 1995).

⁵ The General Counsel does not contend that the Unions' annual renewal requirement is "discriminatory" or in "bad faith" in violation of their duty of fair representation.

tors. As in *L-3*, an objector must remember to mail a statement of renewed objection to the IBEW each year during a designated 1-month period specified in the Unions' procedure. A failure to send a timely renewal results in the loss of opportunity to receive a dues reduction for 11 months, until the renewal period recurs. Further, the *Beck* procedure in the instant case does not furnish objectors with multiple notice and reminders of the annual renewal requirement, as was the case with the *Beck* procedure at issue in *Colt's Mfg.* It was those features that led the Board in *Colt's Mfg.* to find that the burden imposed by the requirement there was de minimis, and that it was hence unnecessary to weigh the union's proffered justifications for the requirement. (356 NLRB No. 164, slip op. at 3.)

2. Accordingly, absent procedures to minimize the burden imposed on objectors similar to those in *Colt's Mfg.*, we turn to the Unions' proffered justifications for requiring annual renewal. None are sufficient to save the requirement.

The Unions argue that the annual renewal requirement is necessary to confirm objectors' employment status and their current addresses, but we rejected a similar argument in *L-3*. (See 355 NLRB No. 174, slip op. at 4–5.) Here, the Unions claim to have a heightened stake in knowing that objectors remain employed due to their advance rebate system. But the annual renewal requirement is a poor instrument for achieving the asserted objective. Objectors who quit or otherwise leave employment at any time after renewing their objection and before the next annual renewal date will receive an advance rebate some part of which they are not due even with the annual renewal requirement in place. Moreover, at any time during the year or periodically throughout the year, the Unions can request a list of current or, alternatively, separated employees from employers and the employers will have a legal obligation to supply the list in a timely fashion. In fact, at the end of the year and before paying the advance rebates, the Unions could ask the employers to confirm that all objectors who previously expressed a continuing objection remain employed. As in *L-3*, therefore, the Unions have provided no evidence to show that the annual objection requirement is the most cost-effective or otherwise efficient means of obtaining such information. *Id.*

L-3 is also dispositive of the Unions' contention that the annual requirement is justified by preexisting legal authority. We noted there that the General Counsel's choice in *California Saw & Knife Works*, 320 NLRB 224

(1995),⁶ not to argue that an annual renewal requirement was unlawful did not insulate such requirements from subsequent Board scrutiny. (355 NLRB, slip op. at 5.) As we observed, the Board has the primary responsibility for establishing national labor policy, and court cases—to which the Board was not a party—do not preclude our independent assessment of the issue presented here. *Id.*

Next, the Unions advance a slight variation of an argument made in *L-3*. The Unions' argue that the annual renewal requirement serves the Unions' interest in ensuring that they do not give the *Beck* reduction to employees who no longer want it, and thus ensures that they are not unnecessarily paying advance rebates. In essence, this is the same argument advanced and rejected in *L-3*, that the annual renewal requirement is justified by the fact that some objectors change their minds after the passage of time. *L-3*, supra, slip op. at 5. Moreover, here, the Unions have failed to establish a factual basis for this justification. The IBEW official's testimony that some objectors change their minds over time was based on direct experience with employees who communicated their change of mind to IBEW and asked to be restored to full dues status. Those employees demonstrated by their actions that an annual renewal requirement was not necessary to preclude their receiving, and the Unions paying, unwanted advance reductions. Rather, the evidence showed that many employees who change their mind directly contact the IBEW and affirmatively inform it that they no longer wish to receive reduced dues under *Beck*. The Unions did not present evidence that a significant number of objectors change their minds but do not choose to communicate this to IBEW. The Unions would benefit from the annual requirement only with respect to such individuals.⁷ Moreover, the Unions remain free to ask nonmembers who have registered a continuing objection whether they wish to withdraw the objection after a year or, indeed, at any time.

For these reasons we find that the Unions have failed to establish a reasonable basis for the annual *Beck* renewal requirement. Because the requirement is arbitrary, it violates the Unions' duty of fair representation and Section 8(b)(1)(A) of the Act.

⁶ Enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

⁷ Nor, contrary to the Unions' assertion, is the "unwanted reduction" justification supported by the fact that the Unions provide an advance refund of the total amount of the following year's *Beck* reduction to objectors. The Unions are under no legal requirement to pay an advance refund. Their choice of this mechanism assumes the risk of giving an advance reduction to some employees who no longer want it. It cannot justify imposing the annual renewal requirement on all objectors.

II. LIABILITY OF IBEW

On his own initiative, the judge dismissed the complaint with respect to the IBEW, reasoning that only Local 34, as the sole collective-bargaining representative of employees here, had a duty of fair representation.⁸ We disagree, for the reasons that follow.⁹

It is undisputed that at least since 1992, the IBEW has been primarily responsible for establishing and implementing the *Beck* procedure involved in this case, and that IBEW locals, including Local 34, rely on the IBEW to satisfy their duties under *Beck* and, indeed, are required to conform to the IBEW's procedures.

Under settled precedent, this role and relationship suffice to make the IBEW liable here. In *California Saw & Knife Works*, supra, in which the Board established the essential standards for implementing *Beck*'s requirements, the Board found that the international union, along with several of its local unions, had acted unlawfully with respect to their *Beck* procedure, even though "[i]n most cases, the [local unions] are the entities that are certified as the exclusive representatives of the members." 320 NLRB at 230. Cf. *Allen v. Allied Plant Maintenance Co. of Tennessee, Inc.*, 881 F.2d 291, 297 (6th Cir. 1989) (International assumed duty of fair representation by fulfilling local's functions in contractual grievance-arbitration process).¹⁰

We therefore find that the judge erred in dismissing the complaint with respect to IBEW, and that IBEW is jointly liable for the violation we have found with respect to the Unions' annual renewal requirement.¹¹

ORDER

The Respondents, International Brotherhood of Electrical Workers, Local Union 34, AFL-CIO, CLC, and the

⁸ As the judge observed, the complaint alleged that Local 34 was "the exclusive collective-bargaining representative [which] has maintained and enforced collective-bargaining agreements with various electrical contractors." Local 34 was the only union signatory to the agreement that appears in the record.

⁹ The Unions did not contend before the judge that the International bore no responsibility for the *Beck* administrative procedure at issue. Moreover, the Unions did not move or argue for dismissal of the International at any time before the judge issued his decision. And while the International argues before the Board in support of the judge's ruling, it also concedes that it assumed the duty of treating objectors fairly: "the International made a considered decision to assume the responsibility to ensure that, regardless of the administrative capacity of their respective local unions, all objectors were treated fairly."

¹⁰ The cases relied upon by IBEW do not involve the lawfulness of *Beck* procedures established and implemented by an international union and conformed to by a local union.

¹¹ We will substitute an order requiring the remedial notice to be posted at Local 34's office and hiring hall, in the absence of record evidence identifying relevant employers at whose facilities the notice could be posted.

International Brotherhood of Electrical Workers, AFL-CIO, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Requiring nonmember employees, who are covered by a collective-bargaining agreement containing a union-security clause and who object to the payment of dues and fees for nonrepresentational activities, to renew their objections on an annual basis under the Union's existing annual renewal procedure.

(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) Rescind the existing requirement that objecting nonmember employees renew their objection on an annual basis.

(b) Notify nonmember employees who are subject to a union-security clause, by publication in the International's newspaper, that the existing annual renewal requirement for objections to payment of dues and fees for nonrepresentational activities has been rescinded.

(c) Recognize John Lugo as a continuing objector and continue to recognize his objector status until he revokes his objection or the Respondents implement a lawful annual renewal requirement, whichever occurs earlier.

(d) Within 14 days after service by the Region, post at its union office in Milton, Florida, copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means.¹³ Reasonable steps shall be taken by the

¹² 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."

¹³ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director sworn certifications of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. August 10, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, concurring.

I agree with my colleagues that the Respondents' rule requiring *Beck* objectors to renew their objections annually was arbitrary and thus breached their duty of fair representation in violation of Section 8(b)(1)(A) of the Act. I would also find, for the reasons fully set out in the dissenting opinions in *L-3 Communications*, 355 NLRB No. 174, slip op. at 12–14 (2010) and in my dissent in *Colt's Mfg. Co.*, 356 NLRB No. 164, slip op. at 4–6 (2011), that the Respondent's rule was discriminatory. As also stated in my dissent in *Colt's Mfg.*, I would further find that the annual renewal requirement infringes on employees' fundamental Section 7 right to refrain from assisting a union and must therefore be analyzed under Section 8(a)(3) and 8(b)(1)(A) rather than under the more deferential duty of fair representation standard applied here by the majority. *Id.*, slip op. at 6.

Dated, Washington, D.C. August 10, 2011

Brian E. Hayes, Member

NATIONAL LABOR RELATIONS BOARD

MEMBER PEARCE, dissenting.

Although I agree with the majority that the appropriate legal framework for analyzing this case is the duty of fair representation under Section 8(b)(1)(A), for the reasons set forth in my dissenting opinion in *Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB No. 174, slip op. 14–16 (2010), I would dismiss the 8(b)(1)(A) allegation that the Union breached its duty of fair repre-

sentation by requiring the Charging Parties to renew their *Beck*¹ objections annually.

Because the General Counsel bears the burden of proving that the Union's action was arbitrary, discriminatory, or in bad faith, and as the Union's annual-renewal requirement rationally serves its legitimate interests and was well supported by legal precedent at the time of its actions, I find that this burden has not been met. Indeed, as in *L-3 Communications*, I find that it is manifestly unjust to find a violation here.

Accordingly, I respectfully dissent.

Dated, Washington, D.C. August 10, 2011

Mark Gaston Pearce, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

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 nonmember employees, who are covered by a collective-bargaining agreement containing a union-security clause and who object to the payment of dues and fees for nonrepresentational activities, to renew their objections on an annual basis under our existing annual renewal procedure.

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

WE WILL rescind the existing requirement that objecting nonmember employees renew their objection on an annual basis.

WE WILL notify nonmember employees who are subject to a union-security clause, by publication in the In-

¹ *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).

ternational's newspaper, that the existing annual renewal requirement for objections to payment of dues and fees for nonrepresentational activities has been rescinded.

WE WILL recognize John Lugo as a continuing objector and continue to recognize his objector status until he revokes his objection or we implement a lawful annual renewal requirement, whichever occurs earlier.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO AND ITS
LOCAL UNION NO. 34, AFL-CIO

Kevin McCormick, Esq., for the General Counsel.

Victoria L. Bor, Esq. (Sherman, Dunn, Cohen, Leifer & Yellig, P.C.), of Washington, D.C., for the Respondents.

Matthew C. Muggerridge, Esq. (National Right to Work Legal Defense Foundation), of Springfield, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Chicago, Illinois, on October 27, 2008. The charges were filed by John Lugo, an individual (Charging Party) on June 10, 2008,¹ and the order consolidating cases, consolidated complaint, and notice of hearing (complaint) was issued August 28. The complaint as amended at the hearing alleges that the International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO, CLC (Respondent Local) and the International Brotherhood of Electrical Workers, AFL-CIO, CLC (Respondent International) (and jointly Respondents) violated Section 8(b)(1)(A) of the Act by informing employees subject to a union-security provision that in order to become and remain a *Beck* objector nonmember employees must renew their objections annually during November of the preceding calendar year, thereby breaching the fiduciary duty they owe to represented employees. Respondents' answer admits the allegations in the complaint concerning the filing and service of the charges, interstate commerce and jurisdiction, labor organization and agency status, and the maintenance of collective-bargaining agreements by Respondent Local with union-security provisions. Respondents also admit that each advised nonmember employees of their obligation to renew their *Beck* objections annually in November but denied that this violated the Act.

I note that there is no allegation in the complaint that Respondent International represents any employees or has any collective-bargaining agreements with employers that include union-security provisions. This fact becomes important in assessing whether Respondent International owes a duty of fair representation to any employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondents, and the Charging Party, I make the following.

¹ All dates are in 2008 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

The Oberlander Electric Company, Inc., a corporation, performs electrical work out of its facility in East Peoria, Illinois, where it annually purchases and receives goods and materials valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which enterprises receives those goods and materials directly from points outside Illinois. The Respondents admits and I find that Oberlander is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Respondent Local and Respondent International each is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

There are about 906 local unions affiliated with Respondent International; the local unions vary in size from 7 to 30,000 members. Some local unions have full-time paid officers and staff while others have part-time officers who are paid very little. The local unions are charged with the responsibility of collecting all dues and enforcing the union-security provisions in collective-bargaining agreements. Members pay \$11 per month to Respondent International and the local unions determine what additional amounts should be added as local dues.

Respondents spend money collected under union-security provisions contained in collective-bargaining agreements on matters not germane to their representational duties. Respondents have procedures for nonmember employees who exercise their rights under *CWA v. Beck*, 487 U.S. 735 (1988), to pay only that portion of dues Respondents spend on representational duties. These procedures require objecting nonmember employees to annually renew their objections during November to be effective for the following year. The annual renewal procedures apply to all of Respondent International's affiliated local unions in the United States. Respondent International publishes an annual notice in its newspaper that it mails to all members and nonmembers who pay dues or fees to any local union. This annual notice advises the employees among other things, of their *Beck* rights, including the obligation to annually renew their objection during November. Local unions provide the same information to every new employee who becomes part of a bargaining unit.

Dmytro Halkyn is director of per capita department for Respondent International. Halkyn explained that before 1992 Respondents' procedures required *Beck* objectors to file their objections with the local unions as well as Respondent International in order to get a reduction in the dues of the local union and international, respectively. But after a series of complaints issued by the General Counsel against local unions the procedures were revised pursuant to a settlement agreement to provide for only a single notice in order to get reductions for both the international and local portions of the dues. The revised procedures provided for objections to be filed with Respondent International to assure a measure of uniformity in the manner in which the objections were processed. But the annual renewal

part of the objector procedures existed before the settlement and continued to remain in effect afterwards; they were not part of the litigation. Under Respondent International's dues reduction procedures each January objectors are sent checks for the amount of reduction for an entire year. This allows Respondent International to collect the same amount of dues during that year from objectors and nonobjectors alike. The downside, however, to this procedure is that employees may not remain covered by the union-security provision for the entire year and may therefore receive the partial dues remission when the employees did not pay dues. The local unions are allowed to create their own procedures concerning how they return non-chargeable portions of dues to *Beck* objectors. Some local unions provide upfront reductions while others reduce the payments made by objectors.

Lugo works as a journeyman electrician and has used the Respondent Local's hiring hall to obtain employment with various employers who are signatories to collective-bargaining agreements with it. On about June 8, 2007, Lugo exercised his *Beck* rights. The Respondents eventually recognized Lugo's *Beck* objections and refunded to him a portion of the dues he had paid.²

B. Arguments and Analysis

In his brief the General Counsel states that the complaint does not challenge Respondents use of the November window period but argues that:

The Respondents' requirement that nonmember *Beck* objectors renew their objections every year constitutes an arbitrary restriction on an employee's right to refrain from union membership and from supporting nonrepresentational expenditures.

The Board has yet to address this specific issue but there have been a number of court cases that have addressed this matter; they have come down on both sides of this issue. Those cases are described by Judge Biblowitz in his decision in *United Auto Workers (Colt's Mfg. Co.)*, JD (NY)-06-08 (March 3, 2008), and need not be repeated here. In that case Judge Biblowitz concluded that the annual renewal obligation violated Section 8(b)(1)(A). In *IAM, Local Lodge 2777(L-3 Communications Vertex Aerospace)*, JD (ATL)-02-08, Judge Marcionese also concluded the union there violated Section 8(b)(1)(A) by requiring annual *Beck* objections. Finally, in *General Truck Drivers, Local No. 952 (Albertson's)*, JD (SF) 30-06 (May 30, 2006), I concluded in a different factual setting that the annual renewal obligation violated Section 8(b)(1)(A).

The General Counsel points by analogy to restrictions found unlawful by the Board in *California Saw and Knife Works*, 320 NLRB 224 (1995),³ such as requirements that *Beck* objectors file their objections individually and by certified mail. In *Polymark Corp.*, 329 NLRB 9 (1999), rev'd in part on other grounds sub nom. *Mahat v. NLRB* 248 F.3d 1150 (6th Cir.

2000), the Board specifically affirmed its conclusion in *California Saw* that a union violates its duty of fair representation when it imposes a window period limitation on an employee who recently resigned his membership in a union and who had also filed *Beck* objections.

I next emphasize the narrowness of the complaint allegations. The complaint does not allege that Respondents directly restrained or coerced employees in the exercise of their Section 7 right to become and remain *Beck* objectors. Rather, the complaint alleges only that Respondents breached their duty of fair representation by requiring annual renewal of *Beck* objections. As Respondents point out in their brief, the legal analysis in ascertaining a breach of a duty of fair representation is different from the analysis of a violation of a Section 7 right. The test for the former affords a union a wide range of reasonableness. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 45 (1998); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). By framing the complaint as he does the General Counsel is implicitly conceding the Section 7 right to become and remain a *Beck* objector is qualitatively different from the Section 7 right to resign from membership in a union. The latter is an unfettered right, *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), *Machinist Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984); the former may be encumbered so long as the encumbrances are not arbitrary or invidious. The Board has not yet differentiated between in this area between the Section 7 right to become and remain a *Beck* objector and notice requirements concerning this right that emanate from the duty of fair representation. So I test the annual renewal requirement under the duty of fair representation. I therefore do not apply what might otherwise have been persuasive arguments made in the Charging Party's brief concerning why the right to become and remain a *Beck* objector should be treated the same as the right to resign from union membership.

Having identified the legal analysis I will apply in this case, I note that the Respondents argue that it is the local unions, and not Respondent International, that has the duty of fair representation. In this regard the complaint supports this contention as it only alleges that Respondent Local represents employees. It does not allege, nor is there evidence, that Respondent International represents any employees, jointly with the local unions or otherwise. Neither the General Counsel nor the Charging Party explains in this case how a duty of fair representation applies to Respondent International. It follows that the complaint must be dismissed as it pertains to Respondent International.

I now turn to address whether the yearly renewal requirement breaches Respondent Local's duty of fair representation. Respondents argue that the annual renewal requirement should be viewed in context of their overall framework for handling *Beck* objections and that those overall procedures easily fall within a careful exercise of their duty of fair representation. One may concede that Respondents' *Beck* procedures are generally an acceptable exercise of a duty of fair representation. But this does not shield component parts of those procedures from examination. Stated differently, Respondents may not imbed an arbitrary procedure in an otherwise reasonable program and expect the arbitrary procedure to escape scrutiny.

² There is no allegation that manner in which Respondents processed Lugo's *Beck* objections was unlawful.

³ Enf'd sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

Next, Respondents argue:

[T]he procedures that the IBEW and its local unions have put in place to administer fee objections including the annual renewal requirement are neither unfair, arbitrary nor invidious. Instead, the procedures were adopted by the International and made applicable to all of its local unions as a way of best assuring that in this large union with autonomous local unions of every size and level of staff, the rights of objecting non-members are honored. Thus, the International developed a plan which was designed to assist local unions in fulfilling their obligations to represent non-members that it believed would best assure that objectors receive the information and the reductions to which they are entitled in a systematic and dependable way.

To support this argument Halkyn testified that Respondents maintain the annual requirement because:

We need to know that the individual still wants to receive the per capita reduction. We need to know that the individual is still employed and paying dues and fees. And we want to verify the individual's address. But most importantly, the up front annual reduction is, or should I say the renewal requirement is closely tied to the fact that we pay them up front. The two are interrelated and they work as one plan.

But it is Respondent Local that owes the duty of fair representation in this case; it can not pass off that duty to Respondent International. As the Charging Party points out in his brief, the: [A]dministrative rationales offered by Respondent dealt with the Union's need to verify the objector's job and contact information. It can be conceded that some administrative purpose may exist for requesting and obtaining such information. What cannot be explained, however, is how the mandatory annual renewal of objection policy furthers or is related to the administrative need to maintain accurate employment and contact information for the represented employees.

Certainly Respondent Local is in a position to easily ascertain whether a unit employee continues to be employed and to maintain, so far as possible, current address information without maintaining the annual renewal requirement. Indeed, Respondent International has address and employment status information that it uses to satisfy its *Beck* and *General Motors* notice requirements yet it does not explain why this same information is not adequate concerning its dues remissions. Halkyn's testimony says little concerning why Respondent Local, who after all collects both the local and international portion of the dues, needs the annual renewal provision for any purpose other than challenging the continuing nature of the *Beck* objection. By this requirement Respondent Local limits *Beck* objector status to a period of one year per objection even absent any indication that the objector desired to place any time limitation on the objection. A *Beck* objector is not a member of a union, and as such the Supreme Court has stated "[T]he union has no more control over the former member than it has over the man in the street." *NLRB v. Granite State Joint Board, Local 1029*, 409 U.S. 213, 217 (1972). Because the annual renewal procedure serves no legitimate purpose it is arbitrary and breaches Respondent Local's duty of fair representation.

CONCLUSIONS OF LAW

By informing *Beck* objectors that they must annually renew their objections, Respondent Local violated Section 8(b)(1)(A).

REMEDY

Having found that the Respondent Local Union has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Charging Party argues that to remedy the violation Respondents should be required to reimburse all dues collected from *Beck* objectors who did not annually renew their objections. However there is no evidence that Respondent Local has actually collected full dues from *Beck* objectors who failed to annually renew their objections. Moreover, in his brief the General Counsel does not request any make whole remedy; instead he requests only a cease and desist order and notice posting. Certainly if there was evidence that Respondent Local actually collected full dues from the non-members who did not annually renew their objections the General Counsel would have sought a make whole remedy. Under these circumstances I conclude there is no factual basis in this case to support a make whole remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.⁴

ORDER

The Respondent Local, the International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO, CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Informing *Beck* objectors that they must annually renew their objections.

(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 14 days after service by the Region, post at its union offices and hiring halls in Illinois, copies of the attached Notice marked "Appendix."⁵ Copies of the Notice, on forms provided by the Regional Director for Region 13, 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 employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the

⁴ 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.

⁵ 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."

Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since December 11, 2007.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 19, 2008

APPENDIX
NOTICE TO EMPLOYEES AND 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 with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT inform employees covered by a union-security provision who object to paying full membership dues that they must file those objections annually.

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

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION No. 34, AFL-CIO, CLC