

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
(Trimas Corp. d/b/a/ Cequent Towing Products)

Case No. 25-CB-8891

and

Douglas Richards, an Individual

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
(Chemtura Corp.)

Case No. 25-CB-9253
(formerly Case 6-CB-11544)

and

Ronald Echegaray, an Individual

Case No. 25-CB-9254
(formerly Case 6-CB-11545)

and

David M. Yost, an Individual

CHARGING PARTIES' MOTION FOR RECONSIDERATION
AND MEMORANDUM IN SUPPORT

Glenn M. Taubman, Esq.
Attorney for Charging Parties David Yost and
Ronald Echegaray

William L. Messenger, Esq.
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Pursuant to §102.48(d)(1) and (2) of the Board's Rules and Regulations, Charging Parties David Yost, Ronald Echegaray and Douglas Richards file this Motion For Reconsideration and Memorandum in Support, following the Board's decision in *United Steel, Paper etc. (Trimas Corp. d/b/a Cequent Towing Products)*, 357 NLRB No. 48 (August 16, 2011).

I. INTRODUCTION

In its recently issued decision, 357 NLRB No. 48, the Board considered various exceptions to the Administrative Law Judge's decision dismissing the case. The Board agreed with the Charging Parties' primary Exceptions, and found the United Steel Workers' (hereafter "USW") nationwide "annual renewal of *Beck* objections" policy to be unlawful. But the Board did not rule on several of the Charging Parties' other Exceptions.

As relevant to this Motion for Reconsideration, the Charging Parties filed Exception No. 4 concerning the remedies needed in this case. Exception No. 4 stated:

Charging Parties except to the ALJ's failure to provide a nationwide reimbursement remedy (or any remedy at all) to the Charging Parties and all similarly situated employees whose objections were not honored or who were "flipped" back to being non-objectors without their explicit approval.

In contrast to its ruling on the merits which struck down the USW's nationwide "annual renewal" policy, the Board utterly failed to address Charging Parties' Exception No. 4 or the need for a nationwide "similarly situated" remedy. Although the Board issued an order requiring the union to expunge the illegal policy prospectively, the only employees receiving a retrospective remedy in this case (that their past continuing

objections be accepted by the union) are the three named Charging Parties. The entire nationwide class of similarly situated discriminatees – many of whom also had their continuing objections disregarded by the USW – are ignored by the Board’s decision, notwithstanding Exception No. 4.

Thus, Charging Parties specifically move the Board to reconsider its failure to address Exception No. 4 concerning the need for nationwide “similarly situated” remedies; and Charging Parties hereby ask the Board, on reconsideration, to order such nationwide similarly situated “make whole” remedies for all other discriminatees besides the three Charging Parties.¹ Such relief would include: 1) mandating that the USW provide back pay to all employees who were “flipped” from objector to non-objector status and then forced to pay for the USW’s nonchargeable activities; and 2) requiring the USW to accept as “continuing objectors” all current objectors and all those who filed

¹ In *Badertscher v. NLRB*, No. 10-72182 (9th Cir. June 28, 2011), the Ninth Circuit dismissed a petition for review concerning a remedial decision of the Board on the grounds that, by failing to file a motion for reconsideration to the Board, the petitioner failed to properly preserve the issue on appeal. The Ninth Circuit adopted the Board’s argument and held that the objection to the Board’s remedial decision was waived because “the Board did not decide the merits of her claim and [the Petitioner] did not seek reconsideration before the Board.”

The Board’s argument and the Ninth Circuit’s decision in *Badertscher* do not provide sufficient guidance on what decisions or elements of decisions by the Board must be made the subject of a motion for reconsideration in order to properly preserve claims on appeal. In light of the procedural ruling in *Badertscher* and out of an abundance of caution under Section 10(e) of the Act, the Charging Parties have filed this Motion so that the Board will have the opportunity to reconsider the part of its decision that failed to even mention Exception No. 4 or rule on the request for nationwide “similarly situated” remedies in this case.

objections since at least August 2010, so that no additional objections will be needed.

II. ARGUMENT

In Exception No. 4, Charging Parties excepted to the Administrative Law Judge's decision to grant no remedies, and asked the Board to order a nationwide "make whole" remedy to the Charging Parties and all similarly situated discriminatees of the union's illegal policy. In its decision on the merits, 357 NLRB No. 48, the Board simply ignored this Exception, and ordered affirmative retrospective relief for only the three named Charging Parties, to wit: that the union recognize their past "continuing objections." This remedy presumably means that the union must also make the three Charging Parties financially whole if excessive agency fees were collected as a result of the denial of their continuing objection and their being switched from objector to non-objector status by the USW.

For the following reasons, the Board should reconsider its decision and impose a similar remedy – a nationwide "make whole" remedy – on the USW in favor of **all** individual employees injured by the illegal "annual renewal" policy.

It is well-established Board practice that remedies can be extended beyond the narrow confines of Complaint. *See, e.g., UFCW Local 648*, 347 NLRB No. 83 (2006); *Teamsters Local 299 (Hilltop Services, Inc.)*, 346 NLRB No. 32 (2006); *UFCW Local 951 (Meijer, Inc.)*, 336 NLRB 730, 739 & n.51 (1999) (providing remedies to employees whose rights were violated at "the beginning of the 6-month period preceding the filing

and service of the charge”). Indeed, the Board has long recognized that where a widespread pattern of unlawful activity has taken place in a §§8(b)(1)A or 8(b)(2) context, the appropriate relief should include a remedy for the named discriminatees and all other individuals “similarly situated.” *Ironworkers Local 433*, 298 NLRB 35 (1990); *Plumbers Local 198 v. NLRB*, 747 F.2d 326 (6th Cir. 1985) (upholding broad relief against union that had unlawfully operated a hiring hall, in spite of the admitted difficulty in locating all of the discriminatees).

In identical circumstances involving the IAM’s “annual renewal” policy, ALJ Marcionese ordered a nationwide “similarly situated” remedy. *Machinists Lodge 2777*, JD(ATL)-02-08 (January 9, 2008). The ALJ stated, at page 2:15-19:

To the extent that Respondent Unions have charged and collected from the Charging Party, and any other objecting nonmembers, fees in excess of those required for representational activities as a result of a nonmember failing to renew his or her objection, the Respondent should be required to reimburse the nonmember, with interest, for any excess fees collected since the 2004 objection period.

Id., footnote omitted. The Board disagreed, however, and overturned ALJ Marcionese’s nationwide remedy in *IAM (L-3 Communications)*, 355 NLRB No. 174 (2010). The Board’s rationale for denying the nationwide remedy was that some past federal court precedents upheld the “annual renewal” policy; that the Board was implementing a “new” rule in contravention of those prior precedents; and that the IAM union could not be faulted for failing to anticipate this “new” Board policy.

In light of consistent court approval of the [annual renewal] requirement under the Act, the lack of any contrary indication by the Board, and the General Counsel's previous advice approving the requirement, the unions could reasonably have believed that the requirement was lawful.

355 NLRB No. 174 at slip op. p. 8 (footnote omitted).

But here, the USW has been on clear and definite notice of the Board's "new" policy since August 27, 2010, when *IAM (L-3 Communications)* was decided. Thus, even if the USW and other labor unions were entitled to a "free pass" on the remedial issue back in August 2010, why are they still entitled to that "free pass" one year later, in August 2011? After all, it has been obvious since August 2010 that the USW's "annual renewal" policy was indistinguishable from the policy struck down in *IAM (L-3 Communications)*, as the Board held in this very case, 357 NLRB No. 48. Indeed, the result in this case should be contrasted with that in *UAW Local 376 (Colt's Mfg. Co)*, 356 NLRB No. 164 (2011), where the Board upheld the UAW's "annual renewal" requirement precisely because it contained added safeguards for employee rights that the USW's policy, like the IAM's in *IAM (L-3 Communications)*, clearly lacked. Thus, it can come as no surprise to the USW, in August 2011, that its "annual renewal" policy is and was illegal, at least since August 2010.

In order to return all discriminatees to the position that they would have been in "but for" the USW's unlawful policies, the union must be required to accept as continuing objectors all current objectors and all those who objected in the past and who were illegally "flipped" from objector to non-objector status (at least since August 2010). The

union must also be required to reimburse all dues extracted for nonrepresentational purposes from those “flipped” employees, reaching back to at least August 2010 (if not to the statutory 6-month period preceding the filing and service of the first ULP charge).

According to the stipulations reached in this case, (G.C. Ex. 2), the USW is the exclusive bargaining representative of all of its bargaining units across the country, and the USW enacted and applied the “annual renewal” policy on a nationwide basis. Moreover, the record is clear that the USW receives, each year, many hundreds or thousands of *Beck* objections from around the nation. (Trial Transcript p. 64, where the USW’s witness testified that there were over 300 then-current objectors when the case was tried). As such, a nationwide remedy is required for all of those employees and others similarly situated, at least going back to August 2010.

There is clear precedent for such a nationwide remedy in *Beck* cases. In *California Saw and Knife Works*, 320 NLRB 224 (1995), the IAM established and administered its *Beck* policy for all of its local lodges, although in “most cases, the Local Lodges are the entities that are certified as the exclusive representatives.” 320 NLRB at 230. In a motion to amend the Board’s original findings, the IAM argued that it should not be held liable for its locals’ failure to notify newly hired employees of their *Beck* rights when the locals first sought to require those employees to pay dues. The Board rejected that argument in its Supplemental Decision:

It is reasonable to hold the IAM, as architect of its *Beck* policy, liable for what the record indicates is the absence of any guidelines to its locals concerning the

notification of newly hired employees. In fact, the record reveals that the IAM has not established any mechanisms for even intermittent monitoring of the locals' performance of the delegated function [of giving new-hire notice]. . . . [T]he IAM may be deemed in compliance if it has instituted procedures ensuring that notice of *Beck* rights is given to new hires by the lodges to which the obligation has been delegated.

California Saw & Knife Works, 321 NLRB 731, 731 (1996).

By the same logic, a national union such as USW must be held fully liable for establishing an objection procedure for itself and its locals when the procedure includes an illegal annual objection requirement. Moreover, in order to return employees to the position that they would have been in “but for” the USW’s unlawful policies, the union must reimburse all dues that it collected for nonrepresentational purposes from employees across the nation, since the Section 10(b) period (or at least from August, 2010), whose *Beck* objections were not honored because of the “annual renewal” policy, or whose status was changed from objector to non-objector as a result of the policy.

III. CONCLUSION

The Board should reconsider the remedial portion of its decision, and should order a complete nationwide retrospective remedy commensurate with the nationwide scope of the USW’s violations, to be effective at least from August 2010 when *IAM (L-3 Communications)* was decided, or from the beginning of the Section 10(b) period. Such relief would include: 1) mandating that the USW provide back pay to all employees who were “flipped” from objector to non-objector status and then forced to pay for the USW’s nonchargeable activities; and 2) requiring the USW to accept as “continuing objectors” all

current objectors and all those who filed objections since at least August 2010, so that no additional objections will be needed from those employees who have already registered their objections.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for

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/s/

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