

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,**

**Cases 13-CB-18961
13-CB-18962**

and

JOHN LUGO, An Individual.

**OPPOSITION OF RESPONDENTS INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL UNION NO. 34 AND
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO TO CHARGING PARTY'S MOTION FOR RECONSIDERATION**

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September 15, 2011

On August 24, 2011, the Charging Party filed a motion for reconsideration in this case. For the following reasons, the motion should be denied.

I. Background

On June 10, 2008, Charging Party John Lugo filed unfair labor practice charges against the International Brotherhood of Electrical Workers (“IBEW”) and its affiliated local union, International Brotherhood of Electrical Workers Local 34 (“Local 34”) (herein collectively “the Respondents”). 357 NLRB No. 45, slip op. at 6. On August 28, 2008, the General Counsel issued a complaint against the Respondents alleging that they had violated Section 8(b)(1)(A) by notifying employees covered by union security clauses that objecting nonmember employees have to renew their objections annually. *Id.* To remedy the alleged unfair labor practices, the General Counsel sought a cease and desist order and a notice posting. *Id.* at 8.

On December 19, 2008, Administrative Law Judge William G. Kocol issued his decision in the instant case, finding that Local 34 violated Section 8(b)(1)(A) by “informing *Beck* objectors that they must annually renew their objections” *Id.* Judge Kocol considered and rejected the Charging Party’s argument that “to remedy the violation Respondents should be required to reimburse all dues collected from *Beck* objectors who failed to annually renew their objections.” *Id.* Judge Kocol noted that “there [was] no evidence that Respondent Local ha[d] actually collected full dues from *Beck* objectors who failed to annually renew their objections.”

Accordingly, Judge Kocol found no factual basis for the make whole remedy the Charging Party sought. *Id.*

The Charging Party and the Respondents filed exceptions with the Board. On August 10, 2011, the Board issued its decision, upholding the ALJ's decision that Local 34 violated Section 8(b)(1)(A) by requiring *Beck* objectors to renew their objections annually, and finding the IBEW jointly liable for the violation. To remedy the violation, the Board ordered the Respondents to rescind the requirement that fee objectors renew their objections annually, notify all nonmember employees who are subject to a union security clause that the annual renewal requirement has been rescinded, recognize Charging Party John Lugo as a continuing objector until he revokes his objection or the Respondents implement a lawful annual renewal requirement, and post a notice – the same remedy the Board ordered in *IAM (L-3 Communications)*, 355 NLRB No. 174, slip op. at 8 (Aug. 27, 2011).

The Charging Party now asks the Board to order the Respondents to make whole “similarly situated” employees nationwide. (Motion at p.3.) In support of his motion, the Charging Party does not point to any supporting record evidence. Rather, the Charging Party states baldly, with no evidentiary support, that “many” of “[t]he entire nationwide class of similarly situated discriminates . . . also had their continuing objections disregarded by the IBEW . . .,” citing a single additional unfair labor practice case. (Motion at p.3 & n.1.) The Charging Party contends that such an expansive remedy is appropriate because, he claims, the IBEW has been on

notice that its annual renewal procedure violates the Act since the Board issued its decision in *L-3 Communications*. As shown below, that contention has no merit, and the motion for reconsideration should be denied.

II. The Board Should Deny the Charging Party's Request for Reconsideration

A. Annual Renewal Requirements Are Not *Per Se* Unlawful

In *L-3 Communications*, the Board for the first time considered whether requiring *Beck* objectors to renew their objections annually violates the Act. 355 NLRB No. 174, slip op. at 2 & n.7. Although the Board found the annual renewal requirement unlawful in that case, the Board made clear that annual renewal requirements are not *per se* unlawful. Rather, the Board held, an annual renewal requirement must be evaluated on a “case-by-case basis,” “in light of the factual and legal landscape” against which the union adopted it. *Id.* at 1, 3. Furthermore, the required evaluation involves a fact-intensive inquiry, and then weighing “the legitimacy of the union’s asserted justifications for its procedures [against] the extent to which they burden employees’ assertion of a *Beck* objection.” *Id.* at 3.

The administrative law judge in *L-3 Communications* had granted the nationwide remedy the Charging Party seeks herein, and had ordered the respondent unions to reimburse any other objecting nonmembers all fees in excess of those required for representational activity collected as a result of the failure to renew their objections. *Id.* at 17. The Board, however, disagreed, and declined to grant retroactive relief as to employees other than the Charging Party. The Board explained: “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." *Id.* at 8.

B. The Factual Landscape Against Which the IBEW Adopted its Annual Renewal Requirement Differed Significantly from that in *L-3 Communications*

Contrary to the Charging Party's assertions, the factual landscape underlying the IBEW's annual renewal requirement was in several respects significantly different from that underlying the procedure the Board evaluated in *L-3 Communications*.

Unlike the fee payer plan at issue in *L-3 Communications*, the IBEW sent objectors a lump sum payment at the beginning of the year consisting of their per capita reduction for that entire year. Because the IBEW incurred the loss of a portion of its per capita dues for the entire year at the beginning of each year, rather than on a monthly basis, the IBEW felt it was reasonable to require objectors to renew their objections annually to ensure both that the IBEW had their current addresses and that it would not forgo per capita contributions to which it was entitled.

In addition, unlike the IAM in *L-3 Communications* (slip op. at 4), the IBEW was not the objectors' collective bargaining representative, and therefore had no statutory right to demand current addresses from the objectors' employers. And the IBEW concluded that it was not feasible to try to obtain the information annually

from its 906 affiliated local unions ranging in size from seven to 30,000 members, some with no staff to assist in such undertakings.

There is an additional reason the nationwide make whole remedy the Charging Party seeks is not appropriate in this case. The Charging Party's proposed remedy is based on an assumption that is not supported by any record evidence – namely, that every individual who registered a *Beck* objection with the IBEW wanted his or her objection to be continuous. The Charging Party presented no evidence to support that assumption.

There is no dispute that the IBEW adopted the procedures at issue in this case out of concern that IBEW-affiliated local unions – especially the smaller locals and those with few or occasional objectors – would have difficulty navigating the evolving body of procedural requirements imposed in the wake of *Beck* and, therefore, to ensure that all fee payers' *Beck* rights were honored. Though the Board ultimately disagreed with the IBEW concerning the legal significance of the differences between the IBEW's procedures and the procedures at issue in *L-3 Communications*, the differences were not before the Board in *L-3 Communications*. Until the Board issued its decision in the instant case, the IBEW therefore was not on notice that its annual renewal requirement likewise violated the Act, and as in *L-3 Communications*, it was reasonable for the IBEW to believe that its renewal requirement was lawful.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request the Board to deny the Charging Party's motion for reconsideration.

Respectfully submitted,



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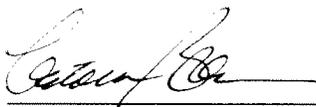
CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2011, copies of Opposition of Respondents International Brotherhood of Electrical Workers, Local Union No. 34 and International Brotherhood of Electrical Workers AFL-CIO to Charging Party's Motion for Reconsideration was served by overnight delivery on:

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