

NOT TO BE INCLUDED
IN BOUND VOLUMES

SL
WHITEFISH, MT

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 4, affiliated with UNITED FOOD
AND COMMERCIAL WORKERS UNION
(Safeway, Inc.)

and

Case 19-CB-9660

PAMELA BARRETT

ORDERS DENYING THE RESPONDENT'S MOTION FOR RECONSIDERATION AND
GRANTING, IN PART, THE GENERAL COUNSEL'S MOTION TO MODIFY THE
BOARD'S ORDER¹

On October 31, 2008, the Board issued a Decision and Order in this proceeding.²

As relevant here, the Board reversed the judge's decision and found that the Respondent failed to provide the Charging Party, a *Beck* objector,³ with sufficiently verified expenditure information, consistent with *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), reconsideration denied 327 NLRB 802 (1999), petition for review

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. 353 NLRB No. 47 (2008).

² 353 NLRB No. 47 (2008).

³ *Communications Workers of America v. Beck*, 487 U.S. 735 (1988) (Supreme Court limited the dues and fees a union can collect from objecting nonmember employees under a contractual union-security clause to amounts expended on activities germane to the union's role as collective-bargaining representative).

dismissed 1999 WL 325508 (D.C. Cir. 1999). Accordingly, the Board found that the Respondent violated its duty of fair representation and thus Section 8(b)(1)(A). In doing so, the Board declined the Respondent's request that the Board modify its chargeable expense reporting requirements to be consistent with the Department of Labor (DOL) reporting requirements set forth in the DOL Form LM-2.

On November 24, 2008, the Respondent filed a motion for reconsideration. Thereafter, the General Counsel filed an opposition to the Respondent's motion. The General Counsel also filed a motion to modify the Board's order with respect to the remedial notice. We discuss each of the motions, in turn, below.

The Respondent argues that: (1) the two-member Board lacked authority to decide this case in the absence of a quorum; (2) the Board ignored the fact that the Charging Party asserted on May 11, 2007 that the Respondent's stated chargeable expenses were "too high" and thus her recourse was to challenge the amount in the union's internal procedure, not request additional information from the Respondent; (3) the expenditure information "review" conducted by the Respondent's accountant satisfied the Respondent's duty to provide sufficiently verified information to the Charging Party; (4) the Respondent's DOL Form LM-2 provides appropriately verified expenditure information, rendering the information verification required by *KGW Radio* inapplicable; and (5) the Board's reporting requirements set forth in *KGW Radio* are no longer necessary given the DOL's updated reporting requirements for the Form LM-2.

Having duly considered these matters, the Board finds that the Respondent's motion does not present the extraordinary circumstances necessary under Section

102.48(d)(1) of the Board's Rules and Regulations to warrant reconsideration of the Board's decision.⁴ Accordingly, we deny the motion as lacking merit.

Regarding the General Counsel's motion to modify the Board's remedial notice, we shall (1) amend the caption of the remedial notice so that it is addressed to "Members and Employees," and (2) provide for the posting of the notice in the Employer's workplace in Whitefish, Montana, if the Employer is willing.⁵ We shall amend our previous Order accordingly.

IT IS ORDERED that the Respondent's motion for reconsideration is denied. IT IS FURTHER ORDERED that the General Counsel's motion to modify the Board's Order is granted, in part.

⁴ The Board addressed the authority of the 2-member Board to issue decisions in footnote 1 of its October 31, 2008 Decision and Order.

Also in that Decision, the Board considered and rejected the Respondent's further arguments in favor of reconsideration. The Board found that after receiving the expenditure information from the Respondent on May 11, Charging Party Barrett asserted that she "was not provided with any information that explains or justifies the calculation of this high agency fee." At this point, the Respondent had not provided Barrett with sufficiently verified expenditure information, as required by *KGW Radio*. Thus, as the Board ordered, her recourse was to have the Respondent provide her with such verified information and not, as the Respondent asserts here, to proceed to internal union procedures in order to "resolve her claim or forebear any challenge to that claim."

Further, contrary to the Respondent's claim, the accountant's review of its expenditure information did not satisfy the reporting requirements set forth in *KGW Radio*. As the Board found, the accountant's review was not sufficient because the accountant relied only on the representations of Respondent's management, and he did not independently verify that the expenses claimed were in fact made.

Moreover, the Board considered and declined the Respondent's request to modify the chargeable expense reporting requirements set forth in *KGW Radio* to be consistent with the DOL's LM-2 reporting requirements.

⁵ See *American Postal Workers Union, Local 735 (United States Postal Service)*, 342 NLRB 545 (2004). The remaining requests for modification are denied.

AMENDED ORDER

The National Labor Relations Board affirms its previous Order as modified below and orders that the Respondent, United Food and Commercial Workers Union Local 4, affiliated with United Food and Commercial Workers Union, Butte, Montana, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

“Sign and return to the Regional Director for Region 19 sufficient copies of the notice for posting by Safeway, if willing, at all places at its Whitefish, Montana store where notices to employees are customarily posted.”

2. Reletter existing paragraph 2(c) as paragraph 2(d).

Dated, Washington, D.C., January 21, 2009.

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL)

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 provide to nonmember objectors expenditure information that is neither sufficiently verified nor supported by a local presumption.

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 provide Pamela Barrett with information concerning our expenditures (or, in the event that we rely on a local presumption, expenditures by our parent union) that has been verified by an independent auditor.

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 4, AFFILIATED WITH
UNITED FOOD AND COMMERCIAL WORKERS UNION