

NOT TO BE PUBLISHED  
IN BOUND VOLUMES

PHG  
Chicago, IL

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

and

Case 13-CB-18961

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO

and

Case 13-CB-18962

JOHN LUGO

ORDER DENYING  
MOTION FOR RECONSIDERATION

On August 10, 2011, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>1</sup> The Board found that the Unions violated their duty of fair representation by requiring nonmembers whom they represent and who seek objector status under *Communications Workers of America v. Beck*<sup>2</sup> to assert their objections on an annual basis. The Board ordered the Unions to rescind their annual renewal requirement and to recognize the Charging Party as a continuing objector until he revokes his

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<sup>1</sup> 357 NLRB No. 45.

<sup>2</sup> 487 U.S. 735 (1988).

objection or the Unions implement a lawful annual renewal requirement, whichever occurs first.

On August 24, 2011, the Charging Party filed a Motion for Reconsideration. On September 15, 2011, the Unions filed an opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>3</sup>

The Charging Party requests reconsideration of the Board's remedy, arguing that it should encompass all current and past *Beck* objectors represented by the Unions nationwide. He argues that the Unions should be ordered to recognize all such objectors as continuing objectors and to provide them with make-whole relief, including reimbursement of all dues and fees collected from them for nonrepresentational activities. Alternatively, the Charging Party asserts that such relief should encompass all individuals represented by the Unions who have filed *Beck* objections since August 27, 2010, the date on which

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<sup>3</sup> The Charging Party has filed a motion to disqualify Members Block, Griffin and Flynn from ruling on this case, arguing that their recess appointments to the Board by the President exceeded his authority under Section 3(a) of the National Labor Relations Act and Article II, Section 2 of the United States Constitution. For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (March 29, 2012), we reject the Charging Party's argument. Accordingly, the motion is denied.

the Board issued its lead decision addressing the validity of a *Beck* annual renewal requirement. See *Machinists Local Lodge 2777 (L-3 Communications)*, supra.

Under Section 102.48(d) of the Board's Rules and Regulations, a motion for reconsideration must be justified by "extraordinary circumstances." For the reasons set forth below, the Charging Party has failed to make this showing.

The Board in *L-3 Communications*, supra, specifically declined to "announc[e] a per se rule" that annual renewal requirements are unlawful. Rather, the Board stated that it would proceed on a case-by-case basis "to inquire into a union's *Beck* procedures when they are challenged 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. The Board found in *L-3 Communications* that the unions had failed to present a legitimate justification for their annual renewal requirement sufficient to justify even the modest burden the requirement posed on an individual seeking to make an objection. *Id.*<sup>4</sup> The Board granted prospective remedial

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<sup>4</sup>In contrast, in *Auto Workers Local 376 (Colt's Mfg. Co.)*, 356 NLRB No. 164 (2011), the Board applied the standard

relief only, however, because the unions could reasonably have believed that their requirement was lawful in light of court approval of the requirement, the lack of any contrary indication by the Board, and the General Counsel's previous advice approving the requirement. *Id.*, slip op. at 8. The Board thus ordered the unions to rescind their annual renewal requirement, but did not order make-whole relief, and directed the unions to recognize the charging party only – not all *Beck* objectors represented by the unions nationwide – as a continuing objector.

The Charging Party's request for make-whole relief here is inconsistent with the decision in *L-3 Communications*, in which the Board specifically declined to give retroactive application to its ruling. Likewise, the Charging Party's request that remedial relief be extended to all nonmembers represented by the Unions exceeds the limited prospective relief granted in *L-3 Communications*.

In addition, contrary to the Charging Party's contention, the issuance of the Board's decision in *L-3 Communications* did not immediately render the Unions' annual renewal requirement unlawful and trigger a remedial

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announced in *L-3 Communications* to find that the unions' annual *Beck* renewal requirement was not unlawful, because the unions there had taken steps to minimize the burden the requirement imposed on objectors.

obligation by the Unions. Rather, the Board explained that it would proceed on a case-by-case basis to evaluate the validity of a union's annual renewal requirement based on the specific factors presented.<sup>5</sup>

The Board having considered the matter,

IT IS ORDERED that the Motion for Reconsideration is denied.<sup>6</sup>

Dated, Washington, D.C., April 18, 2012

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Mark Gaston Pearce, Chairman

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>5</sup> Moreover, in arguing that their annual renewal requirement was not arbitrary, the Unions here relied on at least one aspect of their procedure not present in *L-3 Communications*. In the instant case, each objector received an advanced dues reduction check on an annual basis, and the Unions argued that their annual renewal requirement was needed to minimize the risk of unnecessarily paying advance rebates to individuals who are no longer employed in a bargaining unit represented by the Union. 357 NLRB No. 45, slip op. at 1, 3 & fn. 7. Thus, the issuance of the Board's decision in *L-3 Communications* would not necessarily have put the Unions in the present case on notice that their annual renewal requirement was unlawful.

<sup>6</sup> We reach the same conclusion and issue a similar order today with respect to the motion for reconsideration in *Cequent Towing Products*, 357 NLRB No. 48 (2011).

