UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA	)	
	)	
and	)	
	)	Case No. 8-CB-10487
COMMUNICATIONS WORKERS OF AMERICA LOCAL 4309,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
SANDA ILIAS,	)	
Charging Party.	)	

CHARGING PARTY'S EXCEPTIONS AND BRIEF IN SUPPORT OF

EXCEPTIONS TO THE DECISION ON REMAND

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES (cont.)

Page

Constitution and Statutes

Miscellaneous

CHARGING PARTY'S PRELIMINARY STATEMENT CONCERNING STATUS OF BOARD MEMBERS

Board Members Sharon Block and Richard Griffin are disqualified from either hearing or issuing any rulings in this case, because their "recess" appointments to the Board by President Obama are unconstitutional. Since the Board lacks a quorum under *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010), no decision should issue in this case until a lawful quorum exists.

On January 4, 2012, President Obama announced that he was "recess" appointing three members to the NLRB, Members Block, Griffin, and Flynn (who subsequently resigned). Although the United States Senate was in session at the time of the President's purported appointments of the new Board members,[1] he did not obtain the advice and consent of the Senate that Article II, Section 2, Clause 2 of the U.S. Constitution requires. Thus, the President improperly attempted to name the new NLRB members as "recess" appointments pursuant to Article II, Section 2, Clause 3, even though the Senate was not in recess at the time. Consequently, the appointments of Members Block and Griffin violate Articles I and II of the U.S. Constitution, and the Board lacks a quorum.

EXCEPTIONS

While in agreement with much of Administrative Law Judge ("ALJ") Clark's decision striking down the annual renewal policy of Communications Workers of America ("CWA" or "Union"), Charging Party Sanda Ilias excepts to a number of specific holdings in the decision.

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[1] By unanimous consent, the Senate voted to remain in session for the period of December 20, 2011 through January 23, 2012, remarks in the Senate, 157 Cong. Rec. S8783-8784 (Dec. 17, 2011) (Sen Ron Wyden, "Orders for Tuesday, December 20, 2011 through Monday, January 23, 2012.") Moreover, the House of Representatives never gave its consent to a Senate recess of more than three days, as is required by Article I, Section 5, Clause 4 of the Constitution.

Charging Party Ilias excepts to ALJ Clark's holding that Respondent CWA's annual objection policy should be based on the duty of fair representation standard. Rather, the ALJ should have used a statutory and constitutional standard. Charging Party Ilias excepts to ALJ Clark's implicit holding that an objection is required in order for a non-member fee payor to limit the payment of money paid to CWA. Instead, the ALJ should have ruled that no non-members are required to only pay fees in excess of the pro-rata share of collective bargaining, contract administration and grievance adjustment, unless they specifically opt-in and agree to pay a fee equal to full union dues. Charging Party Ilias excepts to the holding of ALJ Clark that CWA can require the use of specific language, such as "continuing," to make an objection continuing or permanent in nature. Charging Party Ilias excepts to ALJ Clark's failure to provide a make-whole remedy for Charging Party and other non-member fee payors who did not make annual objections. Lastly, Charging Party Ilias excepts to the failure of the Notice to include the above-detailed items.

Specifically, Charging Party Ilias excepts to the ten items listed below.

1. Charging Party Ilias excepts to page 7, lines 6-9, where ALJ Clark adopted earlier Board language "that [the Board] would evaluate such requirements on a case-by-case basis 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.'"(Citation omitted).

2. Charging Party Ilias excepts to page 7, lines 11-12, where ALJ Clark adopted an earlier Board holding "that the Board applies the duty-of-fair representation standard in [*Communications Workers of America v.*] *Beck* [, 487 U.S. 735 (1988)] cases. (355 NLRB

1063)."

3. Charging Party Ilias excepts to page 7, lines 17-20, where ALJ Clark implicitly rejected the theory that all non-members are entitled to limit their payment of fees without an objection, but stated that a union could have an objection policy that would be evaluated as follows: "if the burden imposed on employees by an annual renewal requirement is more than de minimis, [then] the Board evaluates a union's proffered justifications for the requirement considered in the context of the particular *Beck* procedures involved."

4. Charging Party Ilias excepts to page 7, lines 32-43, where ALJ Clark implicitly rejected the theory that all non-members are entitled to limit the payment of fees without an objection, but stated that a union objection policy would be evaluated as follows,

> The Board also found that the fact that an objection could be filed at any time under the *Beck* procedure in *Colt's Mfg.* [*UAW, Local 376*, Case No. 34-CB-2631, JD(NY)-06-08 (Mar. 3, 2008], was '[e]qually [as] important' as the notices and the remainder. The absence of a fixed filing period greatly reduces the consequences of a failure to renew. Unlike the instant case and *L-3 Communications* [*Machinists Local 2777*, 355 NLRB 1062 (2010)] an employee subject to the annual renewal procedure set forth in *Colt's Mfg.*, could regain objector status by filing an objection as soon as the objector learned of the omission. Thus, an objector who acts promptly would only have to pay full dues for a brief period. Objectors who miss the filing during the limited window period in *L-3 Communications* and the Respondent's procedure are required to pay full dues for another 11 months. Moreover, under procedure used in *Colt's Mfg.*, an objector who fails to renew on time, promptly receives a remainder of the need to act in order to regain objector status. That procedure stands in stark contrast to a once-a-year notice published in the house magazine – the method used by the respondents in *L-3 Communications* and the Respondents in the instant case.

5. Charging Party Ilias excepts to page 8, lines 4-5, wherein ALJ Clark accepted the Board's holding that a union can adopt procedures that will permit it to require an annual renewal

when he held that: "[b]ased on the foregoing, I find that the Respondents have not implemented any procedures to minimize the burden imposed on *Beck* objectors similar to those in *Colt's Mfg.*"

6. Charging Party Ilias excepts to page 10, lines 18-30, where ALJ Clark stated:

> Although in this case there was no request for a continuing objection the following synopsis is set forth in *L-3 Communications* and would be of guidance for the parties going forward:
>
> > [A]bsent a more compelling rationale or other procedures that minimize the burden of annual objection not present in this case, a union violates its duty of fair representation if it declines to honor nonmember employees' express, written statement to the union that they object on a continuing basis to supporting union activities not related to collective bargaining and contract administration. If a union provides a written explanation of the consequences of submitting a simple objection in contrast to a continuing objection, the union does not violate its duty by honoring simple objections for only 1 year. In addition, a union need not honor requests to object for periods of time other than 1 year and continuously.

7. Charging Party Ilias excepts to page 10, lines 41-45, where ALJ Clark concluded:

> Accordingly, the counsel for the Acting General Counsel and the Charging Party's request for a make-whole remedy is inconsistent with *L-3 Communications*, where the Board specifically declined to give retroactive application to its ruling. Similarly, the Charging Party's request that remedial relief be extended to all nonmembers represented by the Respondents exceeds the limited prospective relief granted in *L-3 Communications*.

8. Charging Party Ilias excepts to the omissions in the Remedy, page 11, lines 16-22. It failed both to provide a make-whole remedy for Charging Party Ilias and other non-member fee payors and to prohibit Respondent CWA from requiring any objection from non-members in order to refrain from paying an amount equal to full union dues.

9. Charging Party Ilias excepts to the Order, pages 11-12, for its failure to provide a

make-whole remedy for Charging Party Ilias and other non-member fee payors and to prohibit Respondent CWA from requiring any objection from non-members in order to refrain from paying an amount equal to full union dues.

10. Charging Party Ilias excepts to the Notice because it does not strike down any objection requirement and fails to provide for a make-whole remedy for Charging Party Ilias and other non-member fee payors.

ARGUMENT AND LEGAL AUTHORITIES IN SUPPORT OF EXCEPTIONS

I. THE FACTS OF THE CASE

CWA permits individuals who resign from the Union to file an objection at the time they first become an agency fee payor (GC. Ex. 3, Tr. 66), but requires[2] most other non-members to file objections to having their money used for political and non-collective bargaining activities during a window period in May of each year (Tr. 65). The Union makes some exceptions. For instance, employees covered by the Railway Labor Act are not required to renew their objections on an annual basis (Tr. 92). Also, CWA occasionally makes exceptions to its policy by honoring objections during other times of the year. For example, in the case of Ms. Ilias, CWA accepted an objection letter dated in January 2006, at about the same time she had filed an unfair labor practice charge with the Board) (Tr. 97). If objectors wish to maintain their status as an objector, the Union requires that they renew their objection on an annual basis (Tr. 10). CWA provides notice of its May window period in the March/April issue of the *CWA News* (Tr. 63). The result

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[2]In accordance with ALJ Clark's holding that the case was limited to facts at the time of the trial (page 2, lines 37-42), Charging Party's references to CWA's agency fee policy pertain to the time of trial, and not to any post-trial changes CWA made to that policy.

of CWA's objection procedure is that while the Union has approximately 13,000 fee payors, only approximately 1,500 are objectors.

Ms. Ilias is a not a member of CWA and is a dues objector under *Communications Workers of America v. Beck*, 487 U.S. 735 (1988). Ms. Ilias pays Union dues through automatic check-off (Tr. 17). In September 2004, she resigned from the Union and notified it that she objected to paying for non-collective bargaining activities (Tr. 16, GC. Ex. 6). Because the Union continued to collect full union dues from her, Ilias filed an unfair labor practice charge (Joint Ex. 1, stipulation ¶¶ 1 & 2). On July 25, 2005, CWA entered into a bi-lateral settlement agreement with the NLRB that resulted in her receiving a $136.85 refund for non-representation expenditures for the 2004-2005 fiscal objector year (Joint Ex. 1, stipulation ¶ 2).

Although the Union was fully aware that Ilias objected to paying full dues, based upon her September 2004 objection letter, they continued to take full union dues from her salary. CWA provided her with a refund in 2006, after she sent a second objection to the Union and filed this unfair labor practice charge. CWA continued, however, its policy of requiring a yearly renewal of objection to full dues and continued to deduct full dues without providing her an advance reduction or refund.

CWA claims that it provides a reminder of the annual renewal requirement in the *CWA News*. However, Ms. Ilias has not always received the *CWA News*. She testified that she while had received several copies during and shortly after the 2004 strike (Tr. 18), she does not currently receive the publication (Tr. 48). Even when she did receive it, she did not read it because "it was like junk mail and I did not have the time." (Tr. 18). Ilias did not learn from the *CWA News* of her right to resign from the Union and object to its non-bargaining expenses. She

learned of those rights on an internet site that was not sponsored by CWA (Tr. 24).

Notably, CWA does not require Ilias to annually renew her dues check-off authorization. Neither did it, while she was a CWA member, require her to annually renew her membership or, as a non-member, require her to annually renew her resignation (Tr. 23). The only annual renewal that CWA does require is the filing of objections. The Union does not send out reminders to individuals to renew their objections. Employees must remember to look at and read the objection notice in the *CWA News* (Tr. 87). Ms. Ilias never received a notification from the Union that her objection was about to expire (Tr. 20).

Charging Party Ilias filed a second unfair labor practice charge in January 2006. A trial was held before ALJ Wallace Nations on October 27, 2008. ALJ Nations ruled that CWA's policy was unlawful and struck down the annual renewal requirement and ordered restitution of Ilias' fees in excess of the lawful chargeable amount. Exceptions were filed and the Board remanded the case to the Division of Judges. Following additional briefing, ALJ Clark likewise struck down the CWA policy, but held that the Union could, under certain circumstances, require individuals to specify in their objection that their objection was continuing. Unlike ALJ Nations, ALJ Clark failed to order restitution to Charging Party Ilias.

II. INTRODUCTION

This case is about CWA's policy requiring non-members who pay fees as a condition of employment to file annual objections in order to pay a fee less than full dues, as set-forth in the U.S. Supreme Court's decision in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988). ALJ Nations reached the correct result in this case when he struck down CWA's annual renewal provision and ordered make-whole relief for Charging Party. However, he erred by not

holding that all non-members are entitled to limit the collection and payment of fees equal to full union dues without filing an objection, and failing to provide the make-whole remedy for all other non-member fee payors. ALJ Clark also struck down the annual renewal policy, but explicitly left open the possibility that CWA could require individuals to specify that they wished their objection to the taking and use of their fees for non-chargeable activities to be a continuing objection. Last, ALJ Clark failed to provide a make-whole remedy both for Charging Party Ilias and other non-member fee payors.

III. CWA CANNOT COMPEL NON-MEMBERS TO PAY FULL UNION DUES UNLESS THEY OPT-IN AND CHOOSE TO MAKE THOSE PAYMENTS.

A. CWA Lacks the Statutory Authority to Collect Full Membership Dues from Any-Nonmembers Unless They Opt-In.

It is well established that employees cannot be required to become, or remain, members of a labor union as a condition of their employment. Employees have a § 7 (and constitutional) right to refrain from union membership, and to resign that membership at any time. *See NLRB v. General Motors Corp.*, 373 U.S. 734 (1963); *Pattern Makers League of N. Am. v. NLRB*, 473 U.S. 95, 102-03 (1985); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977). Employees subject to a compulsory unionism (a.k.a. "union security") clause also have a § 7 right, 29 U.S.C. § 157, to refrain from paying full union dues as a condition of employment. Employees who choose not to be union members need only pay reduced "financial core" fees equal to their pro-rata share of a union's costs for collective bargaining, contract administration, and grievance adjustment. *See Beck.*, 487 U.S. at 762. These are absolute statutory (and constitutional) rights and are not

contingent upon whether the CWA violates its duty of fair representation.[3]

Unions have no statutory authority under the National Labor Relations Act to collect dues from non-members that are used to subsidize activities unrelated to collective bargaining, contract administration, or grievance adjustment (i.e., "nonrepresentational activities"). Section 7 provides "employees" with the right to "refrain" from "join[ing] or assist[ing]" a union. 29 U.S.C. § 157. A union forcing a non-member to pay monies to it as a condition of employment inherently infringes on an employee's § 7 right to refrain from supporting a union.

The lone exception to an employee's § 7 right to refrain from supporting a union is "an agreement requiring membership in a labor organization as a condition of employment as authorized in § 8(a)(3) [29 U.S.C. § 158(a)(3)]." 29 U.S.C. § 157. Thus, a union's collection of compulsory fees does not infringe on an employee's § 7 rights if, *and only if*, the collection is authorized by § 8(a)(3).

But § 8(a)(3) does **not** authorize the collection of employees' dues for nonrepresentational activities. In *Beck*, the Supreme Court held that "Section 8(a)(3) . . . authorizes the exaction of **only** those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" 487 U.S. at 762-63 (emphasis added, citation omitted).

Accordingly, CWA does ***not*** have statutory authority under § 8(a)(3) to collect from Ilias, or any other non-member employee, any dues or fees that support nonrepresentational activities. *Id.* at 745-46, 752-54. CWA's collection of compulsory fees for nonrepresentational activities

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[3]Although these are statutory and constitutional rights, CWA also violated its duty of fair representation by requiring annual renewal of objections and failing to recognize all non-members as objectors.

from Ilias or any other non-member *per se* infringes upon their § 7 rights, in violation of § 8(b)(1)(A), 29 U.S.C. §158(b)(1)(A). *Id.*

Since CWA lacks both the statutory and constitutional authority to compel non-members to pay full union dues, it cannot lawfully compel non-members to pay full union dues. Furthermore, for CWA to require non-members to pay full union dues unless they opt-out of the Union's full dues, by filing an objection, violates employees' statutory and constitutional rights

Admittedly, the Supreme Court in *Beck* held that a non-member employee could be required to object to paying full union dues in order to compel a union to reduce the fees paid. However, CWA admits that, out of approximately 13,000 fee payors, approximately only 1,500 pay a fee less than dues. This is dramatic evidence that CWA's objection procedure serves merely as a road block to discourage fee payors from gaining the benefit of the exercise of their statutory and constitutional rights when they choose to refrain from union activities.

Just as CWA has no right or authority after *Pattern Makers* to turn non-members into members at some arbitrary time of the union's choosing, CWA has no statutory right or authority after *Beck* to turn non-members into employees who pay full dues to the Union based upon their silence.

The Supreme Court now recognizes that any objection requirement is inherently hostile to employee rights, and recently held that:

> requiring objecting nonmembers to opt out of paying the nonchargeable portion of union dues—as opposed to exempting them from making such payments unless they opt in—represents a remarkable boon for unions. Courts "do not presume acquiescence in the loss of fundamental rights." *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 682, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999) (internal quotation marks omitted). Once it is recognized, as our cases have, that a nonmember cannot be forced to fund a union's political or

ideological activities, what is the justification for putting the burden on the nonmember to opt out of making such a payment? Shouldn't the default rule comport with the probable preferences of most nonmembers? And isn't it likely that most employees who choose not to join the union that represents their bargaining unit prefer not to pay the full amount of union dues? An opt-out system creates a risk that the fees paid by nonmembers will be used to further political and ideological ends with which they do not agree. But a "[u]nion should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining." [*Chicago Teachers Union* v.] *Hudson,* [475 U.S. 292] *supra,* at 305, 106 S.Ct. 1066 [1986] (internal quotation marks omitted).

Although the difference between opt-out and opt-in schemes is important, our prior cases have given surprisingly little attention to this distinction. Indeed, acceptance of the opt-out approach appears to have come about more as a historical accident than through the careful application of First Amendment principles.

The trail begins with dicta in [*Machinists v.*] *Street,* where we considered whether a federal collective-bargaining statute authorized a union to impose compulsory fees for political activities. 367 U.S. [740], at 774, 81 S.Ct. 1784 [1961]. The plaintiffs were employees who had affirmatively objected to the way their fees were being used, and so we took that feature of the case for granted. We held that the statute did not authorize the use of the objecting employees' fees for ideological purposes, and we stated in passing that "dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee." *Ibid.* In making that offhand remark, we did not pause to consider the broader constitutional implications of an affirmative opt-out requirement. Nor did we explore the extent of First Amendment protection for employees who might not qualify as active "dissenters" but who would nonetheless prefer to keep their own money rather than subsidizing by default the political agenda of a state-favored union.

In later cases such as *Abood* and *Hudson,* we assumed without any focused analysis that the dicta from *Street* had authorized the opt-out requirement as a constitutional matter. Thus in *Hudson* we did not take issue with the union's practice of giving employees annual notice and an opportunity to object to expected political expenditures. At the same time, however, we made it clear that the procedures used by a union to collect money from nonmembers must satisfy a high standard.

Knox v. Serv. Employees Int'l Union, Local 1000, 132 S. Ct. 2277, 2290-91 (2012).

Following the clear direction of the Supreme Court in *Knox*, the Board should hold that Ilias and all other non-member employees cannot be required to opt-out of the payment of full union dues by asserting any objection. Should they so chose, however, they may have the opportunity to opt-in to the payment of full union dues. After *Knox*, the Board should recognize that all non-members are objectors who cannot be required to opt-out if they want to assert their *Beck* rights.

B. In The Alternative, CWA Cannot Require Any Specific Language or Magic Words to Make an Objection Permanent.

In the alternative, if the Board declines to recognize all non-members as *per se* objectors to the payment of dues and fees for political, ideological and other activities unrelated to a union's duty as a collective bargaining representative, then it should hold that a single simple objection to those forced payments is all that is required. ALJ Clark, while striking down CWA's annual renewal policy, stated that CWA could, under certain circumstances, require an objector to use the word "continuing," or some other words, in order to make an objection permanent or continuing. As discussed above, however, the Union does not have the statutory authority under § 8(a)(3) to collect fees for nonrepresentational activities from employees who are already on record as *Beck* objectors. Consequently, CWA cannot require a fee payor to use specific or "magic" words in order to be guaranteed that right. As such, CWA's policy infringes on employees' § 7 right to "refrain" from supporting a union in violation of § 8(b)(1)(A).

The only way that CWA's "annual objection" policy could be lawful is if the Union had the statutory authorization to transform employees from *Beck* objectors into non-objectors after twelve months, unless they employed some specific language to opt-out. But CWA does not

have the statutory authority to control either the length of time an employee chooses to be an objecting non-member or the language he must use to opt-out of full union dues. "[W]hen there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street." *NLRB v. Granite State Joint Bd., Textile Workers Union of Am., Local 1029*, 409 U.S. 213, 217 (1972); see also *Pattern Makers*, 473 U.S. at 102-03 (policy of the Act is "voluntary unionism," the right to join or leave at will).

The right to refrain from paying full union dues under *Beck* is a § 7 statutory right that belongs to employees, not unions. *See generally Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992) (NLRA protects employees, not unions and their organizers). The employees' right under § 7 to refrain from supporting political and ideological activities they find abhorrent is not a "benefit bestowed by the grace" of CWA. To the contrary, it is a pure statutory right with which CWA has no lawful right to interfere. As such, CWA has no power to unilaterally determine that an employee's *Beck* objection ends at the stroke of midnight on the anniversary of the objection unless the objector uses CWA's prescribed "magic" words. The Union cannot "transform" an objecting employee into a non-objecting employee by arbitrarily declaring that the objection expires on a certain date absent the use of the "magic" words. CWA can no more declare that objecting employees automatically become non-objecting employees on a particular date, unless they used specific words, than it can declare that all non-members automatically become union members on a particular date, unless they use specific words. *Pattern Makers*, 473 U.S. at 102-03 (policy of the Act is "voluntary unionism"); *Communications Workers of Am. v. Beck*, 487 U.S. 735 (1988).

The Board has long held that there is no talismanic method that an employee must use in

order to resign or otherwise effectively sever his ties to a union. *See e.g., Electrical Workers, Local 66 (Houston Lighting & Power Co.)*, 262 NLRB 483, 486 (1982), holding that, "a member may resign from the union at will so long as the desire to resign is clearly communicated. Further, such communication may be made in any feasible way and no particular form or method is required."

Likewise, employees who object to the payment of full union dues should not be forced to use any specific language to communicate that their objection is permanent or continuing. A single objection should communicate that an objector is a "continuous objector." Only if an objector later revokes or chooses to opt-in to paying full union dues should his status change.

In *Sheet Metal Workers (Rohde Brothers)*, 298 NLRB 50 (1990), a union's constitution mandated that resignations, to be effective, must be made in writing and mailed to the financial secretary *only*. The Board affirmed an ALJ decision striking down that constitutional provision, holding that "by limiting . . . resignations, Respondent [unions] elevate form over substance and complicate resignation procedures to the frustration of statutory rights of employees." *Id.* at 53. So also, requiring an objector to use specific language to communicate that his objection in continuing and permanent places form over substance.

As discussed above, CWA cannot turn a non-member into a member or an objector into a full dues payor. To require an objector to employ specific language has that exact same result if the objector is unaware of the specific language requirement that makes his objection continuing and permanent. Any policy that requires an employee to use specific words places a onerous burden on the employee and serves as an effective road block for a non-member.

IV. CHARGING PARTY ILIAS AND OTHER NON-MEMBERS ARE ENTITLED TO MAKE-WHOLE RELIEF.

ALJ Nations granted Charging Party Ilias make-whole relief, by ordering restitution of non-chargeable fees seized from her. He did not order that same relief for other non-members. ALJ Clark, on the other hand, failed to provide make-whole relief both to Ilias and to the other non-members.

ALJ Clark recognized that CWA's annual renewal policy placed a burden on Ilias and that CWA had no justification to impose that policy. That recognition, combined with the fact that CWA has no statutory right to collect full dues, entitles her to a full refund of any fees collected from her for purposes for which she could not lawfully be compelled to pay. However, ALJ Clark failed to order restitution. That failure to make Ilias whole failed to effectuate the purposes of the Act.

Ms. Ilias testified that it was a burden to annually object. As recounted in the statement of facts, she receive no notice from the Union that her objection would expire. Neither did she receive an annual notice as to when to file the required objection, nor has she always received the *CWA News*. The mother of two young children, Ms. Ilias has considerable responsibilities. She testified that "the last thing on my mind is to sit there and remind myself about a letter."

The annual renewal is an unmistakable burden on fee payors. CWA has approximately 13,000 fee payors compared to about 1,500 objectors. That is proof that sending the annual objection, or, for that matter, even objecting, is a hurdle that most non-members cannot jump. CWA should not be permitted to profit from road blocks it creates that have the effect of interfering with employees' exercise of § 7 and constitutional rights. The deprivation of

employees' rights and money, coupled with the fact that CWA has no statutory right to any of the money in excess of the chargeable amount that it unlawfully seized from the non-member fee payors requires that the Board make-whole all the fee payors for the monies taken. CWA should not be permitted to profit from its mis-deeds. To do so deprives employees of their § 7 rights and does not effectuate the purposes of the Act.

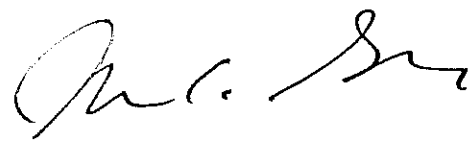
Furthermore, in the case of Charging Party Ilias, permitting CWA to retain the fees unlawfully taken from her is particularly unconscionable. CWA had notice of her objection at least from the time she filed her unfair labor practice charge in January 2006. That charge made it clear that Ilias had a continuous objection to the payment of full union dues. At a minimum, all fee payors who had made known their continuing objection and, specifically, Charging Party Ilias, should be made whole for the unlawful seizure of their monies by CWA.

CONCLUSION

ALJ Clark's basic conclusion in this case is correct to the extent that it holds that CWA's "annual renewal" policy is unlawful. However, the ALJ should have held that all non-member fee payors are *per se* objectors and need take no action to opt-out of the payment of full union dues. He should not have left the door open to a union requirement that objectors employ specific language to maintain their continuing objection. Furthermore, the ALJ should have

provided make-whole relief to Charging Party Ilias and all other non-member fee payors for the relevant § 10(b) period.

Sincerely,



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October 15, 2012

CERTIFICATE OF SERVICE

I certify that, on October 15, 2012, the Charging Party's Exceptions and Brief in Support of Exceptions to the Decision on Remand, was electronically filed with the National Labor Relations Board, and sent via e-mail to the following:

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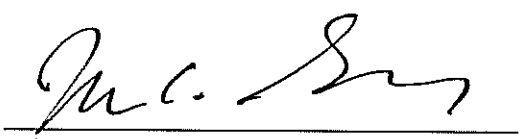

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