

*United States Government*  
*National Labor Relations Board*  
OFFICE OF THE GENERAL COUNSEL  
**Advice Memorandum**

DATE: February 20, 2014

TO: Peter Sung Ohr, Regional Director  
Region 13

FROM: Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: UNITE HERE Local 1 (Riva Restaurant)  
Cases 13-CB-98725; 13-CB-98726;  
13-CB-100474

536-2581-0160-0000  
536-2581-3307-0000  
536-2581-3307-5000  
536-2581-6767-7600  
548-6050-6701-5000  
548-6050-6701-7500

These cases were submitted for advice as to (1) whether the Union violated the Act by implementing a delinquent dues payment plan that effectively gave employees about 10 weeks to pay up to six years of back dues, and if so, whether the plan caused the terminations of two employees who successfully completed the payment plan but failed to make a subsequent dues payment; and (2) whether the Union violated the Act by requiring that *Beck*<sup>1</sup> objectors pay their monthly agency fees online, by mail, or in person rather than through automatic checkoff.

We conclude that the dues payment plan was lawful because it satisfied the *Philadelphia Sheraton*<sup>2</sup> requirements for adequate notice and provided a reasonable opportunity to satisfy the employees' dues obligations. Therefore, the payment plan did not unlawfully cause the employees' terminations. We further conclude that the Union did not violate the Act by requiring that *Beck* objectors pay monthly fees online, by mail, or in person, rather than through automatic dues checkoff. Accordingly, these charges should be dismissed, absent withdrawal.

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<sup>1</sup> *Communication Workers v. Beck*, 487 U.S. 735 (1988).

<sup>2</sup> *NLRB v. Hotel, Motel & Club Employees' Union, Local 568, AFL-CIO (Philadelphia Sheraton Corp.)*, 320 F.2d 254, 258 (3d Cir. 1963), *enforcing* 136 NLRB 888 (1962).

## **FACTS**

Riva Restaurant (the Employer) operates an upscale restaurant located on the Navy Pier in Chicago. UNITE HERE Local 1 (the Union) has represented a bargaining unit comprised of the Employer's servers and bartenders since approximately 1995. The parties' collective-bargaining agreement contains a union security provision that requires that all unit employees maintain "membership in good standing" in the Union as a condition of employment. The contract also contains an automatic dues-checkoff provision, which allows employees to authorize the Employer to deduct "Union dues, assessments, initiation fees, and reinstatement fees" from their paychecks and remit the payment to the Union. The servers and bartenders in the unit earn the majority of their income through tips; therefore, after the Employer makes other legally required deductions, the employees' paychecks do not always have sufficient funds to satisfy their monthly dues obligation to the Union.

### **The Union's Delinquent Dues Payment Plan**

It appears that the Union did not seek to have the union-security clause enforced from 2006 to August 2012. During this period, a number of employees accrued significant dues arrearages. In August 2012, the Union began a process of collecting delinquent dues from employees in the bargaining unit. The Union mailed employees "notices of termination for dues delinquency" on August 9, 2012. These notices contained, among other things, a breakdown of the total amount due for each month from 2006 through June 2012, the amount that the employee had paid for each month, the resulting balance owed for each month, and the total amount that the employee owed. The notice also explained that the employee could pay the balance due to the Union by August 30, 2012 or, if the employee owed more than \$150, he or she could sign up for a payment plan. The payment plan required the employee to immediately pay one-third of the amount due by August 30, the second third by the end of September, and the final third by the end of October. The notice further explained that the Union was notifying the Employer to terminate the employee pursuant to the union security clause if the employee did not make the payment or sign up for the payment plan by August 30, 2012. The Union sent second notices on August 16 and final notices on August 23. These notices contained substantially the same information as the first notice. The August 23 notice stated that it was the last and final warning and that "the next thing that will happen is that you will lose your job."

In mid-August, the Employer also met with employees to explain that a number of them were in arrears on their dues payments and that they were required to pay in full or sign up for a payment plan with the Union. The Employer told the employees that it would have to discharge employees if they did not pay. A document was also posted on the locker room door in August 2012 that listed the names of employees and the amount that each employee owed. The document was labeled "URGENT" and

stated that the employees listed “may be terminated for non dues payment if they do not come into compliance with the [U]nion by August 30, 2012.”

Monthly dues had ranged from about \$37-\$46 per month over the six-year period prior to August 2012. Over half of the twenty-seven employees in delinquency owed the Union over \$1,000. The charging parties, Server 1 and Server 2, owed the Union approximately \$2,400 and \$2,600, respectively.

Server 1 and Server 2 both signed up for the Union’s payment plan by August 30. Server 1 completed her payments to the Union according to the plan requirements. She also made an additional \$200 payment to cover future dues owed to the Union. Server 2 made the payments required under the payment plan in August and September but did not make the required October payment. The Union sent a letter on October 31 to Server 2 notifying him that he had missed the payment due October 31 and had until November 12 to make the payment or the Union would instruct the Employer to terminate him. Server 2 made the final payment on November 5.

During January 2013, the Union sent three notices to Server 1 and Server 2 informing them that they each owed \$50.30 for their November 2012 dues, and that they were required to make this payment by January 31, 2013 by 4:30 pm or they would be terminated. A notice posted in the workplace also informed employees that November dues had to be paid by January 31, 2013 or they would be terminated.

On January 31, 2013, the Union emailed the Employer a letter requesting the Employer terminate Server 1, Server 2, and one other employee pursuant to the union security clause because the employees had not paid their November 2012 dues by January 31. On February 2, 2013, the Employer terminated Server 1 and Server 2. Both servers were ultimately rehired by the Employer by mid-February, but both servers lost their seniority.

### **The Union’s Policy Regarding Automatic Dues Deduction for *Beck* Objectors**

On September 19, 2012, Server 3 informed the Union that she wished to become a *Beck* objector. At some point thereafter, the Union told the Employer to discontinue dues checkoff for Server 3. On February 5, 2013, Server 3 emailed the Employer asking whether it was the Employer or the Union that had stopped her automatic checkoff. The Employer told Server 3 that the Union had requested that her dues deduction be discontinued but that the Employer would be amenable to automatically deducting her fee. The Employer requested a new checkoff authorization, which Server 3 promptly provided. On February 15, 2013, the Employer automatically deducted the reduced *Beck* objector fee of \$22.49 from Server 3’s paycheck and attempted to remit this to the Union.

The same day, the Union emailed the Employer and stated:

After consulting with leadership and our legal team, my understanding is that under the law, the [U]nion can receive money deducted by an employer from employee pay only pursuant to a written assignment of “membership dues.” [Server 3] is not paying membership dues and therefore it may be illegal for these funds to be deducted and paid to the [U]nion.

The Employer forwarded this email to Server 3 and stated that it was discontinuing automatic deduction from her paycheck of her fees due to the Union. Server 3 has therefore been required to pay her *Beck* objector fee in one of three ways: she may pay her fees in person at the Union’s offices; mail in a payment; or make a payment online, which is subject to an additional 2.5 percent service charge.

The Union, in its position statement, states that there is a serious question whether it would be lawfully permitted to accept the Employer’s remittance of *Beck* objectors’ agency fees under Section 302 of the Labor Management Relations Act (LMRA), because it permits checkoff only with respect to “money deducted from the wages of employees in payment of *membership dues* in a labor organization....”<sup>3</sup>

### **ACTION**

We conclude that the Union’s dues payment plan was lawful because it satisfied the *Philadelphia Sheraton* requirements for adequate notice and provided a reasonable opportunity to satisfy the employees’ dues obligations. Therefore, it did not unlawfully cause the terminations of Server 1 and Server 2. We further conclude that the Union did not violate the Act by requiring that *Beck* objectors pay their monthly agency fees online, by mail, or in person, rather than through automatic dues checkoff. Accordingly, these charges should be dismissed, absent withdrawal.

#### **A. Whether the Union breached its fiduciary duty towards members of the bargaining unit by requiring them to pay up to six years of delinquent dues through a sixty-day payment plan**

Under *Philadelphia Sheraton*,<sup>4</sup> a union seeking to enforce a union-security clause against an employee has a fiduciary duty to deal fairly with that employee. This duty requires that before a union may seek the discharge of an employee for the failure to tender owed dues and fees, it must at a minimum give the employee reasonable notice

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<sup>3</sup> 29 U.S.C. § 186(c)(4) (emphasis added).

<sup>4</sup> *NLRB v. Hotel, Motel & Club Employees' Union, Local 568, AFL-CIO (Philadelphia Sheraton Corp.)*, 320 F.2d at 258.

of the delinquency, including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount; tell the employee when to make the required payments; and explain to the employee that failure to pay will result in discharge.<sup>5</sup> The Board has interpreted this obligation to also require that a union give an employee a reasonable opportunity to satisfy a dues obligation.<sup>6</sup>

There is no bright line test for what constitutes reasonable notice or a reasonable opportunity. Instead, the Board considers the situation in light of the circumstances.<sup>7</sup> The Board has found in a number of cases in which a union gave an employee very short notice, such as one to five days, that the union did not provide reasonable notice or a reasonable opportunity to satisfy a financial obligation to the union,<sup>8</sup> particularly where the short time period is coupled with other procedural deficiencies, such as a lack of clarity of the amount due.<sup>9</sup> In contrast, the Board has found that unions provided employees with a reasonable opportunity to satisfy financial obligations

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<sup>5</sup> *Teamsters Local 122 (August A. Busch & Co. of Mass., Inc.)*, 203 NLRB 1041, 1041-42 (1973), *enforced mem.*, 502 F.2d 1160 (1st Cir.1974).

<sup>6</sup> *Id.* at 1042; *Radio Electronic Officers Union (Sea-Land Service Inc.)*, 306 NLRB 43, 44 (1992), *enforced in part*, 16 F.3d 1280 (D.C. Cir. 1994).

<sup>7</sup> *See, e.g., Electrical Workers IBEW Local 99 (Electrical Maintenance)*, 312 NLRB 613, 613 (1993), *enforced*, 61 F.3d 41 (D.C. Cir. 1995).

<sup>8</sup> *Id.* (adopting ALJ's holding that four or five days was not sufficient notice to pay delinquent dues and a reinstatement fee considering the amount owed and the union's failure to follow past practice of reminding employee to pay dues); *Carpenters Local 296 (Acrom Construction)*, 305 NLRB 822, 822, 827 (1991) (adopting ALJ's holding that 1 or 2 days notice not sufficient to pay delinquent dues); *Teamsters Local 572 (Ralph's Grocery)*, 247 NLRB 934, 935-36 (1980) (24 hours was not a sufficient period of time to pay approximately \$240, which included a reinitiation fee and 4 months of delinquent dues).

<sup>9</sup> *See August A. Busch & Co. of Mass., Inc.*, 203 NLRB at 1042 (concluding that union breached its fiduciary duty when union failed to provide a statement with the precise amount due, coupled with its failure to give the charging parties an adequate opportunity (one week) to make payment); *L. D. Kichler Co. (Electrical Workers Local 1377)*, 335 NLRB 1427, 1432 (2001) (five-day notice was insufficient where the "hasty sequence of events was coupled with a lack of detail respecting the amount of employee arrearages").

where the employees were given between seven days to a month or more to complete their payments.<sup>10</sup>

Here, the Union provided employees with sufficient notice of their dues delinquencies in August 2012. Thus, it sent employees notices on August 9, 2012 that included a detailed breakdown of what was owed month by month. It told employees that they could either pay in full or sign up for a payment plan by August 30 or they would face termination. And the notices contained the terms of the payment plan, which effectively permitted employees to pay the amount due over a period of 10 weeks. The Union mailed two additional notices in August. Additionally, during the month of August, the Employer held a meeting with employees to explain that they needed to meet their financial obligations to the Union or could face termination. There was also a posting in the workplace with the name of each employee, and the amount he or she owed to the Union.

In addition, the Union's payment plan provided a reasonable opportunity for employees to satisfy their financial obligations. The ten-week period that the Union provided is significantly longer than the payment periods in which the Board found that employees were not afforded a reasonable opportunity. For example, in *Electrical Maintenance*, the Board found that four or five days was not a reasonable opportunity,<sup>11</sup> and in *Acrom Construction*, the Board adopted an ALJ's holding that one or two days was not a reasonable opportunity.<sup>12</sup> Ten weeks is also significantly more time than was provided in cases where the Board found that employees received a reasonable opportunity to satisfy their financial obligations to a union. For example, in *Sea-Land Service Inc.*, the Board found that fifteen days was a reasonable opportunity,<sup>13</sup> and in *Katz Super Drug Store*, the Board adopted an ALJ's holding that two weeks was adequate.<sup>14</sup> As such, the Board's case law simply does not

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<sup>10</sup> See, e.g., *Radio Electronic Officers Union (Sea-Land Service Inc.)*, 306 NLRB at 44, 48-49 (adopting ALJ's decision that 15 days to pay arrears on dues or fees of around \$100 was a reasonable opportunity to make payments but that the union violated the Act by not actually affording employees 15 days); *Monson Trucking*, 324 NLRB 933, 934-35 (1997) (approving of seven-day notice but finding union violated the Act on other grounds), *enforced*, 204 F.3d 822 (8th Cir. 2000).

<sup>11</sup> 312 NLRB at 613.

<sup>12</sup> 305 NLRB at 822, 827.

<sup>13</sup> 306 NLRB at 44.

<sup>14</sup> *Retail Store Employees Union, Local 655 (Katz Super Drug Store, Store No. 460)*, 180 NLRB 1025, 1025, 1026-29 (1970).

support a theory that a ten-week period does not provide a reasonable opportunity, even given the large quantities of money that the employees here were required to pay.<sup>15</sup> Accordingly, the Union did not breach its fiduciary duty to the unit employees when it implemented its payment plan.

Because we conclude that the Union's payment plan was not unlawful, we also conclude that the Union's payment plan did not unlawfully cause the terminations of Server 1 and Server 2 in February 2013 for their failure to pay their November 2012 dues by January 31, 2013.<sup>16</sup>

**B. Whether the Union's policy for dues payment by *Beck* objectors violates the Act**

A union, as the exclusive bargaining representative of employees in a bargaining unit, has a statutory duty to fairly represent all of the employees in that unit in the negotiation, administration, and enforcement of collective-bargaining agreements.<sup>17</sup> A breach of the duty of fair representation occurs when a union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith.<sup>18</sup> A "wide range of reasonableness" must be allowed a statutory bargaining representative in

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<sup>15</sup> See, e.g., *Katz Super Drug Store*, 180 NLRB at 1025, 1026-29 (adopting ALJ's holding that two-week notice was adequate where the amount due was from an initiation fee and approximately six months of delinquent dues; for one employee earning \$24 per week, the amount due equaled \$23, and for another employee earning approximately \$75 per week, the amount due equaled \$39); see also *Teamsters, Local 896 (Anheuser-Busch)*, Cases 20-CB-120570-1, et. al., Advice Memorandum dated May 28, 2004 (concluding that, based on current Board law, the Region should not issue complaint alleging that seven-day notice was insufficient for employees to pay \$1,445 and \$1,368, respectively).

<sup>16</sup> Moreover, it would appear that Server 1 and Server 2 received *Philadelphia Sheraton* notice in January 2013 regarding their obligation to remit delinquent November 2012 dues by January 31, 2013, as well as a reasonable opportunity to satisfy those financial obligations.

<sup>17</sup> *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

<sup>18</sup> *Id.* at 190.

serving the unit it represents, as it affords the union the discretion to account for the conflicting interests of the employees it represents.<sup>19</sup>

In *Communications Workers v. Beck*,<sup>20</sup> the Supreme Court held that unions may not require nonmember employees to finance union activities beyond those associated with collective bargaining and union representation. Pursuant to this mandate, the Board held in *California Saw & Knife Works*<sup>21</sup> that union obligations under *Beck* are properly assessed under the duty of fair representation standard. The Board has therefore evaluated a number of union-implemented procedures relating to *Beck* under the duty of fair representation standard, including the requisite notice that unions must provide to employees of their rights under *Beck*, how employees may register an objection, and whether particular union expenditures are chargeable to objectors.<sup>22</sup>

The instant case implicates both the Union's role as the statutory bargaining representative in relation to the Employer as well as the Union's representational role in affording employees an appropriate structure by which an employee may acquire and maintain *Beck* objector status. In both roles, however, the duty of fair representation standard is applied to the union's conduct.<sup>23</sup>

### **1. The Union's policy is not discriminatory**

We conclude that the Union's policy is not discriminatory for two reasons. First, in order to find discrimination, the General Counsel must establish by a

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<sup>19</sup> *California Saw & Knife Works*, 320 NLRB 224, 229 (1995), *enforced sub nom.*, *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1997) (citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)).

<sup>20</sup> 487 U.S. at 735.

<sup>21</sup> 320 NLRB at 225.

<sup>22</sup> *Id.* at 230-54. *See also Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB 1062, 1064-67 (2010) (union violated its duty of fair representation by requiring *Beck* objectors to renew their objection annually where union offered no rational justification for its requirement).

<sup>23</sup> *See id.* at 1064 (rejecting the view that the Board should overrule *California Saw's* application of the duty of fair representation standard to *Beck* cases and adopt an approach predicated on 8(a)(3) and 8(b)(1)(A)); *Office Employees Local 29 (Dameron Hospital Assn.)*, 331 NLRB 48, 48 n.1 (2000) (same).

preponderance of the evidence that the union's conduct was motivated by discriminatory reasons.<sup>24</sup> The Board considers whether employees have been "singled out for adverse treatment for prohibited reasons" or whether the union has demonstrated a "legitimate explanation for treating the employees differently."<sup>25</sup> Here, there is no evidence that the Union's policy was implemented for prohibited reasons. The Union has asserted that it has refused checkoff on behalf of Server 3 because it believes it could be subject to liability under Section 302 if it accepts *Beck* objector fees, which are not "membership dues," from the Employer. As more fully explicated in Part 2 of our analysis below, we conclude that this is a legitimate explanation for treating employees differently with respect to dues checkoff. Further, there is no evidence of animus against *Beck* objectors or that the Union's explanation is a pretext.<sup>26</sup>

Second, in order for union conduct to be discriminatory, a threshold question is whether the employees being treated differently are similarly situated.<sup>27</sup> Specifically, the Board has found discrimination against nonmembers unlawful only when a union

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<sup>24</sup> *Auto Workers Local 651 (General Motors Corp.)*, 331 NLRB 479, 479 (2000). See also *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140, 140 n.3 (1992) (General Counsel failed to establish that the union's distribution of proceeds from an arbitration award was motivated by animus against nonmembers).

<sup>25</sup> *L-3 Communications*, 355 NLRB at 1068.

<sup>26</sup> The Division of Advice has found employer decisions to deny checkoff for *Beck* objectors to be lawful where the employer provided a legitimate reason for the decision and there was no evidence that the reason was a pretext. See *IAM (The Boeing Co.)*, Cases 19-CB-6643, et al., Advice Memorandum dated February 6, 1991 (finding that the employer's refusal to automatically deduct *Beck* objector fees was not discriminatory because the employer asserted that it would "entail additional administrative expenses and enmesh the employer in the intricacies of *Beck*," and there was no evidence that the employer's policy was discriminatorily motivated); *Pacific Bell*, Case 21-CA-26617, Advice Memorandum dated May 9, 1991 (finding that employer is not obligated under *Beck* to provide a checkoff system to accommodate objecting nonmembers). In addition, the Eighth Circuit Court of Appeals upheld such a dual checkoff structure and found that a union did not breach its duty of fair representation where the employer denied the union's request to deduct an objector's agency fees on grounds that the contractual checkoff provision did not require it to do so. *Conrad v. International Ass'n of Machinists & Aerospace Workers*, 338 F.3d 908, 912 (8th Cir. 2003).

<sup>27</sup> *L-3 Communications*, 355 NLRB at 1068.

“treats members and nonmembers differently in regard to a matter in relation to which membership is irrelevant,” such as the right to employment in an exclusive hiring hall.<sup>28</sup> Indeed, in *Machinists Local Lodge 2777 (L-3 Communications)*, the Board considered the allegation that a union’s disparate procedures for employees to acquire and maintain membership status, and to acquire and maintain *Beck* objector status, were discriminatory.<sup>29</sup> The Board found that union members and *Beck* objectors are not similarly situated in relation to the union security clause because “membership is relevant to the administration of the union-security provision, whose very purpose is to require represented employees to become members...or, in accordance with *Beck*, to pay their share of the cost of representation.”<sup>30</sup>

Here, we conclude that, under *L-3 Communications*, union members, nonmembers, and nonmember *Beck* objectors are not similarly situated in relation to the dues-checkoff provision. Union membership is relevant to a dues-checkoff provision, as it is to a union-security clause, because dues checkoff is a mechanism by which employees can comply with their financial obligations to a union. The financial obligations of union members are qualitatively different than those of nonmember agency fee payers, and quantitatively different than those of nonmember *Beck* objectors, whose fees are typically lower. These three categories of employees are therefore not similarly situated in relation to the dues-checkoff provision. Thus, the policy is not discriminatory.<sup>31</sup>

## 2. The Union’s policy is not arbitrary

A union’s actions are considered arbitrary under the duty of fair representation “only if, in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior is so far outside a ‘wide range of reasonableness’ as to be irrational.”<sup>32</sup> Under this standard, the Board balances the legitimacy of the union’s

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1062.

<sup>30</sup> *Id.* at 1068.

<sup>31</sup> *Id.* at 1068 n.33 (“A difference in the bargained conditions under which an employer will honor an individual employees’ voluntary authorization to make such deductions [through checkoff] and the conditions under which a union will honor an objection is simply not discrimination of the type proscribed by the duty of fair representation.”).

<sup>32</sup> *Id.* at 1064 (internal citations omitted).

asserted justifications for its procedures and the extent to which they burden an employee's rights under *Beck*.<sup>33</sup> However, if the burden is de minimis, the Board need not assess the union's proffered justifications for its procedures.<sup>34</sup>

Here, the Union requires *Beck* objectors to pay their monthly financial obligation to the Union by mail, in person, or online instead of having the fee automatically deducted from their paycheck. This requirement does not pose a significant burden; the employee can pay the Union each month as the employee pays other monthly bills. And if the employee fails to make a payment, the Union's practice is to give the employee a two-month grace period and send three notices informing the employee of the delinquency before requesting termination pursuant to the union security provision. Assuming, arguendo, that this burden is not "de minimis,"<sup>35</sup> we conclude that the Union has articulated a legitimate justification for imposing the burden, considering the wide range of reasonableness accorded to unions under the duty of fair representation.

The Union's justification for refusing to accept automatic deduction from *Beck* objectors' paychecks is to avoid the possibility of civil or criminal liability under LMRA Section 302. The purpose of Section 302 is to prevent the corruption of the collective-bargaining process, particularly through bribery of unions by employers and extortion of employers by unions.<sup>36</sup> It therefore prohibits payments of "any money or other thing of value" from an employer to a union, subject to a limited set of exceptions; violations can result in criminal penalties. The exception for dues, in Section 302(c)(4), covers "membership dues in a labor organization." While "membership" in Section 8(a)(3) of the Act has been interpreted to include non-member agency fees,<sup>37</sup> Section 8(a)(3) is interpreted independently of Section 302.<sup>38</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Auto Workers Local 376 (Colt's Mfg. Co.)*, 356 NLRB No. 164, slip op. at 3 (May 27, 2011), *vacated as moot sub nom., Gally v. NLRB*, 487 F. App'x 661 (2d Cir. 2012).

<sup>35</sup> *Id.* (where objectors received four notices per year and could file *Beck* objection at any time during the year, the burden to renew the objection each year was de minimis).

<sup>36</sup> *Arroyo v. United States*, 359 U.S. 419, 425-26 (1959).

<sup>37</sup> *See NLRB v. General Motors*, 373 U.S. 734, 742 (1963) ("Membership' as a condition of employment is whittled down to its financial core."); *Marquez v. Screen Actors Guild*, 525 U.S. 33, 46 (1998).

And while the Board has approved of nonmember agency fees and service charges being deducted through automatic checkoff,<sup>39</sup> the enforcement and interpretation of Section 302 are not within the Board's statutory mandate.<sup>40</sup> A number of courts have interpreted "membership dues in a labor organization" under Section 302(c)(4),<sup>41</sup> but

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<sup>38</sup> See *NLRB v. Oklahoma Fixture Co.*, 332 F.3d 1284, 1288 (10th Cir. 2003) (prescriptions, purpose and previous interpretation of "dues" in Section 8(a)(3) and Section 302 differ).

<sup>39</sup> See *Auto Workers Local 1752 (Schweizer Aircraft)*, 320 NLRB 528, 532 (1995) ("[W]hen an employee working under a contract with a union-security clause signs a checkoff authorization, the employee agrees to a particular method for paying whatever dues and fees can be lawfully required of him pursuant to the union security clause."), *enforced sub nom., Williams v. NLRB*, 105 F.3d 787 (2d Cir. 1996); *Hearst Corp. Capital Newspaper*, 343 NLRB 689, 693 (2004) (finding employer's refusal to deduct and remit dues after employee's resignation violated 8(a)(5) because resignation does not nullify dues obligation and also does not nullify checkoff authorization absent proper revocation).

<sup>40</sup> See *Wm. Wolf Bakery, Inc.*, 122 NLRB 630, 631 (1958) (Board's interpretation of the term "membership dues" as used in Section 302 should follow that of the Department of Justice, which is responsible for enforcing that section of the LMRA); *BASF Wyandotte Corp.*, 274 NLRB 978, 978 (1985) ("Authority to restrain violations of Section 302 and to judge alleged criminal violations of this section is vested in the United States district courts by Section 302(d) and (e)."), *enforced*, 798 F.2d 849 (5th Cir. 1986).

<sup>41</sup> See, e.g., *Mine Workers, Local 515 v. American Smelting Co.*, 311 F.2d 656, 659 (9th Cir.1963) ("membership dues" included special strike assessment); *Schwartz v. Assoc. Musicians of Greater N.Y.*, 340 F.2d 228, 233-34 (2d Cir.1964) ("membership dues" included a 1.5 percent tax on members' salaries); *International Longshoremen's Ass'n v. Seatrains Lines, Inc.*, 326 F.2d 916, 920 (2d Cir.1964) (payments to union in lieu of dues deduction on behalf of laid-off employees pursuant to negotiated agreement violated Section 302); *Assoc. Builders & Contractors v. Carpenters Vacation and Holiday Trust Fund for N. Cal.*, 700 F.2d 1269, 1275 (9th Cir. 1983) (deduction of supplemental dues was not a violation of Section 302); *Master Insulators v. Int'l Ass'n of Heat & Frost Insulators*, 925 F.2d 1118, 1124 (8th Cir. 1991) (payments to certain benefit and pension plans violated Section 302 and were not "membership dues"); *Grajczyk v. Douglas Aircraft Co.*, 210 F.Supp. 702, 705 (S.D.Cal.1962) (reasoning that there was no practical distinction between membership dues and nonmembers' equivalent service fees for purposes of Section 302).

the meaning is “not plain,”<sup>42</sup> and no court has ever held that *Beck* objectors’ agency fees are “membership dues in a labor organization.”

Given the unsettled nature of the meaning of “membership dues in a labor organization” under Section 302(c)(4), we conclude that the Union’s concern regarding its potential liability for accepting *Beck* objectors’ fee payments via checkoff is not illegitimate or irrational. Other local unions affiliated with the Union’s parent are facing litigation in multiple jurisdictions under Section 302.<sup>43</sup> And while it is unlikely that Server 3 would sue the Union for accepting her fee payments via checkoff, considering that she is the charging party in the instant case, there is a private right of action under Section 302.<sup>44</sup> This means that any individual with standing could bring suit alleging that *Beck* objector fees cannot be deducted because they are not “membership dues.” Therefore, the Union’s asserted reason for rejecting dues through automatic checkoff is a legitimate justification that outweighs the minimal burden imposed on *Beck* objectors.

For the foregoing reasons, we conclude that the Union did not violate the Act by refusing to accept Server 3’s *Beck* objector fees through automatic dues checkoff. Accordingly, this charge should be dismissed, absent withdrawal.

/s/  
B.J.K.

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<sup>42</sup> *Oklahoma Fixture Co.*, 332 F.3d at 1287.

<sup>43</sup> See, e.g., *Mulhall v. Unite Here Local 355*, 667 F.3d 1211 (11th Cir. 2012), cert. dismissed as improvidently granted, 134 S. Ct. 594 (2013) (plaintiff arguing that the employer’s grant of organizing assistance to the union was a violation of Section 302); *Madison 92nd St. Associates, LLC v. Marriott Int’l, Inc. et. al.*, No. 13 Civ. 291 (S.D.N.Y. filed Jan. 24, 2013) (plaintiff arguing that employer’s grant to union of card check agreement was a violation of Section 302).

<sup>44</sup> LMRA Section 302(e), 29 U.S.C. § 186(e); *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 205 (1962), overruled in part on other grounds, *Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235, 237–238 (1970).