

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

## Advice Memorandum

DATE: December 17, 2012

TO: Mori P. Rubin, Regional Director  
Region 31

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

SUBJECT: Teamsters Local 848 (MV Transportation, Inc.)  
Case 31-CB-72773

536-2581-3307-5000  
536-2581-3307-5010  
536-2581-3307-5050

This case was submitted for advice as to whether the Union violated the Act by (1) failing to provide the Charging Party with adequate notice of his *Beck*<sup>1</sup> rights, (2) failing to supply sufficient information after he objected to paying for union activities not germane to the union's duties as bargaining agent, and (3) seeking or threatening to seek his discharge. We conclude that: (1) the initial *Beck* notice was deficient, where it did not relay the potential savings to be gained by objecting or the process for filing an objection; (2) the Union failed to provide adequate post-objection disclosures, where it did not supply a breakdown of expenditures for its affiliates and failed to clarify, upon request, that its own allocation of expenditures was based on audited financial statements; (3) the Union failed to maintain an adequate challenge procedure and failed to supply the procedure upon the Charging Party's request; and (4) the Union violated Section 8(b)(1)(A) and 8(b)(2) by threatening to seek his discharge, and attempting to cause his discharge, for nonpayment of service fees at a time when it had not complied with its *Beck* obligations.

### FACTS

The Charging Party is employed as a paratransit driver for MV Transportation, Inc. (the Employer). The collective-bargaining agreement between the Employer and Teamsters Local 848 (the Union) contains a union-security clause.<sup>2</sup>

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

<sup>2</sup> FOIA Ex. 5

The Charging Party became a member of the Union in June 2010, at which time he signed a notice and membership form, which states:

I understand that under current law, I may elect “nonmember” status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedure for filing such challenges will be provided by the Union, upon request.

On April 27, 2011, the Charging Party notified the Union that he was electing non-member status and objecting to paying the portion of dues not germane to its representational activities. He also requested that the Union provide the most recent allocation of expenditures as well as the procedure for filing a challenge to that allocation. By letter of May 31, the Union informed the Charging Party of his service fee rate, which reflected a discount for the percentage of nonchargeable expenditures, and that dues could be paid monthly or quarterly. It enclosed a one-page schedule of allocated expenditures for 2009, which reflected categories of expenditures and the amounts attributable to chargeable and nonchargeable activities for the Union. Three of the categories reflected per capita taxes paid to various affiliates, including the international. The Union did not provide accompanying notes that the schedule document described as an “integral part” of the document.<sup>3</sup> The Union also did not provide a description of the process for challenging its allocation of expenditures.

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<sup>3</sup> Those notes indicated that the schedule had been prepared based on audited financial statements and described in general terms the activities classified as chargeable and nonchargeable.

In June, the Charging Party and his wife asked the Union for an independently audited financial disclosure for 2010 and the challenge procedure. The Charging Party alleges that the Union promised to send this information by the end of July, but it was never received. According to the Charging Party's wife, who is his representative, the Union never explained the challenge procedure or informed her that an accountant prepared the breakdown of expenditures.<sup>4</sup> With regard to the request for the 2010 disclosure, the Union asserts that the 2009 schedule was the most recent schedule available at that time. When the 2010 allocation became available in early 2012, the Union provided it to the Charging Party, along with an updated dues calculation. With regard to the request for an audited schedule, the Union asserts that it explained to the Charging Party or his wife that the Union's certified public accountant prepared the breakdown of chargeable and nonchargeable expenses. With regard to the challenge procedure, the Union asserts that it explained the process orally and that it does not maintain a written procedure. That process requires an objector to raise any issues or concerns with the Union, which would then have its certified public accountant look into the matter.

In mid-December 2011, the Union sought to collect unpaid dues from the Charging Party for the period from August to December. It sent him a letter detailing the months that were overdue, the total amount owed, and the process for paying the outstanding dues. The Union informed him that if he did not pay the dues owed by the deadline, it would seek his removal from employment. At the same time, the Union informed the Employer of the delinquency and requested that it discharge the Charging Party if he did not fulfill his dues obligation before a set date. Although the Charging Party objected to the delinquency calculation, he paid the amount requested in full.<sup>5</sup> The Charging Party was not thereafter discharged.

### ACTION

The Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by failing to provide a comprehensive initial *Beck* notice, failing to supply sufficient post-objection information, and failing to maintain an adequate challenge procedure. In addition, the Union violated Section 8(b)(1)(A) and 8(b)(2) by threatening to seek, and seeking, the Charging Party's discharge without first complying with its *Beck* obligations.

<sup>4</sup> FOIA Ex. 5



<sup>5</sup> In particular, he asserted that the dues for the last three months of 2011 were not overdue because the quarter was not over.

### 1. Deficiencies in the Initial *Beck* Notice

When a union seeks to collect dues and fees under a union security clause, it must first inform employees of their *General Motors* right to be or remain a nonmember.<sup>6</sup> It must also inform them of their *Beck* rights, namely, that nonmembers have the right (1) to object to paying for union activities not germane to its representational duties and to obtain a reduction in fees for such activities; (2) to be given sufficient information to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.<sup>7</sup>

The Union's *Beck* notice in its membership application was deficient in two ways. First, it did not provide information sufficient to decide whether to object because it did not inform the Charging Party of the potential savings if he objected.<sup>8</sup> Second, the notice did not apprise the Charging Party of the process for filing an objection. At a minimum, the notice should inform employees to notify the union of their decision to become a *Beck* objector.<sup>9</sup> Here the notice merely stated that an employee "may object to paying the pro-rata portion of regular Union dues or fees," but did not specify how to lodge such an objection.<sup>10</sup>

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<sup>6</sup> *NLRB v. Gen. Motors Corp.*, 373 U.S. 734, 743 (1963); *Cal. Saw & Knife Works*, 320 NLRB 224, 233 (1995), *enforced*, 133 F.3d 1012 (7th Cir. 1998).

<sup>7</sup> *Cal. Saw & Knife*, 320 NLRB at 233.

<sup>8</sup> Although not presently required by Board law, the General Counsel's position, which is in accord with the D.C. Circuit, is that unions must apprise potential objectors of the percentage by which dues and fees are reduced for objectors, as well as the full dues rate, so employees can evaluate potential savings in absolute terms. *See United Gov't Sec. Officers of Am. Local 80 (MVM, Inc.)*, Case 5-CB-9447, Advice Memorandum dated April 29, 2003. *See also Penrod v. NLRB*, 203 F.3d 41, 47 (D.C. Cir. 2000) (new employees and financial core payors must be informed of dues percentage that would be chargeable if they objected). *But see L. D. Kichler Co.*, 335 NLRB 1427, 1431 n.18 (2001) (union is required to inform only objectors, not members in general, of the percentage by which dues and fees are reduced for objectors).

<sup>9</sup> *Misc. Drivers, Helpers, Health Care & Public Employees Local 610 (Amerigas)*, Case 14-CB-10014, Advice Memorandum dated Nov. 8, 2005, at 7.

<sup>10</sup> These are the only deficiencies in the notice. We do not read it as requiring employees who have already objected to affirmatively request the Union's allocation of expenditures in order to receive this information. Rather, it offered to provide, upon

Since the failure to provide a proper initial *Beck* notice ordinarily is treated as a continuing violation,<sup>11</sup> we conclude that the Region should allege this as part of the complaint even though the notice was issued before the start of the Section 10(b) period.<sup>12</sup>

## 2. Inadequate Post-Objection Disclosures

Once an employee objects to paying dues in excess of the portion germane to representational activities, the union must apprise him of the percentage of the reduction in dues, the basis for the calculation, and the right to challenge these figures.<sup>13</sup> In order to satisfy its obligation to provide the basis for the calculated reduction, a union must give an objector sufficient information to decide whether to challenge the reduced fee calculation.<sup>14</sup> To that end, a union must provide a breakdown of its calculations by major categories of expenditures, designating which expenditures are chargeable and nonchargeable.<sup>15</sup> It must provide this breakdown not only for its own expenditures, but also for the expenditures of any affiliates to which the union pays per capita taxes.<sup>16</sup> Furthermore, the figures contained in the breakdown must be

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request, information sufficient to enable an employee to decide *whether or not to become an objector*, consistent with *California Saw and Knife*. 320 NLRB at 233.

<sup>11</sup> See *Bakery Workers Local 464 (Milton Hershey School)*, Case 4-CB-9545, Advice Memorandum dated Jan. 15, 2006 (union violates duty of fair representation by failing to provide proper *Beck* notice to employees who were hired and obligated to pay dues outside the Section 10(b) period).

<sup>12</sup> FOIA Ex. 5



<sup>13</sup> *Cal. Saw & Knife*, 320 NLRB at 233.

<sup>14</sup> *Teamsters Local 579 (Chambers & Owen, Inc.)*, 350 NLRB 1166, 1168 (2007). See also *Teamsters Local 75 (Schreiber Foods)*, 329 NLRB 28, 30 (1999) (union need not prove its expenditures are chargeable to the degree asserted until an employee challenges the figures).

<sup>15</sup> *Schreiber Foods*, 329 NLRB at 30. See also *Chambers & Owen*, 350 NLRB at 1168 (union must provide objectors with list of major categories of expenditures, amount spent in each category, a breakdown of which expenditures are chargeable and which are not, and the percentage figures for chargeable versus nonchargeable).

<sup>16</sup> *Chambers & Owen*, 350 NLRB at 1168.

verified so as to confirm that the expenses claimed were actually made.<sup>17</sup> The Board has adopted a duty of fair representation standard in assessing whether a union has met its *Beck* obligations.<sup>18</sup>

Here, the Union only partially complied with its affirmative disclosure obligations. It satisfied its obligation as to its own expenditures by providing the Charging Party with the 2009 schedule of allocated expenditures. That disclosure adequately lays out the categories of expenses, the chargeable portion for each category, and the overall percentage of expenses classified as chargeable. Furthermore, the schedule was prepared based on audited financial statements, and thus, it was properly verified. By supplying the major categories of expenditures and supplying verified figures, the Union met its duty of fair representation as to its own expenditures.<sup>19</sup> The Union's failure to provide the accompanying notes, which were referenced in the breakdown of expenditures and which described the types of expenses classified as chargeable and non-chargeable, was also not unlawful because such notes are beyond the detail that the Board requires unions to provide.<sup>20</sup>

But the Union did not meet its obligation to disclose certain other information to the Charging Party objector. First, it did not satisfy its disclosure obligations as to its affiliates. Although the allocation of expenditures shows that the Union paid per capita taxes to the international and at least two other organizations, the Union did not provide a breakdown of expenditures for these affiliates; it merely classified portions of these taxes as chargeable or nonchargeable. Thus, the Union failed to meet its burden of supplying sufficient information for the Charging Party to decide whether to challenge the service fee.

Second, the Union failed to clarify, in response to the Charging Party's inquiries, that the 2009 allocation schedule was independently audited. As discussed above, a

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<sup>17</sup> *KGW Radio*, 327 NLRB at 477.

<sup>18</sup> *Cal. Saw & Knife Works*, 320 NLRB at 233; *Schreiber Foods*, 329 NLRB at 30.

<sup>19</sup> *Schreiber Foods*, 329 NLRB at 30.

<sup>20</sup> See *Office Employees Local 29 (Dameron Hosp. Ass'n)*, 331 NLRB 48, 51 n.10 (2000) (questions regarding how a union calculated its dues reduction figure are appropriate for challenge stage); *Teamsters Local 166 (Dyncorp Support Servs. Operations)*, 327 NLRB 950, 953-54 (1999), *enforcement denied*, 203 F.3d 41 (D.C. Cir. 2000) (no violation where union failed to provide accompanying items referred to in the breakdown of expenses and failed to explain how it arrived at its estimates of chargeable and nonchargeable expenditures).

union must provide verified chargeability figures. Although no Board case specifically holds that a union must affirmatively inform objectors that its figures have been verified,<sup>21</sup> that information should certainly be provided when an objector asks for it. The Charging Party here alleges that he specifically asked whether the information was audited and that the Union never directly responded to his question or told him that the allocation of expenditures was prepared by a certified public accountant. This information may have been useful for the Charging Party in deciding whether to challenge the expense breakdown, and it would have imposed no burden on the Union.<sup>22</sup> Under these circumstances, the Union's failure to provide that information to the Charging Party upon his request violated its duty of fair representation.<sup>23</sup>

### 3. Inadequate Challenge Procedure

When a union requires objecting employees to pay dues under a union-security clause, it must make reasonable procedures available for filing challenges to the

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<sup>21</sup> See *Teamsters Local 618 (Chevron Chemical Co.)*, 326 NLRB 301, 302 (1998) (rejecting argument that union unlawfully failed to indicate on the face of the expenditure breakdown that it had been audited, where accompanying letter stated that accounting was an independent accountant's report); *Dyncorp*, 327 NLRB at 953 n.13 (no requirement that Union tell objectors when they object that the allocation figures would be verified, but noting that subsequent figures did include statements that the expense breakdown had been audited). See also *Food and Commercial Workers (Safeway, Inc.)*, 353 NLRB 469 (2008), *adopted by a three-member panel*, 355 NLRB No. 133 (2010), where the Board found the failure to provide sufficiently verified information unlawful but did not directly address whether the union had to put the objector on notice that the information had been verified.

<sup>22</sup> Cf. *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1303 (1992) (absent a substantial reason for refusing disclosure, union must comply with requests for job referral data when they may serve some useful purpose related to fair treatment).

<sup>23</sup> Even the Union's version of the information it provided, i.e., that it told the Charging Party or his wife that its accountant prepared the breakdown, would not have met its disclosure obligation since an accountant's review is no guarantee that the figures were properly verified. See *KGW Radio*, 327 NLRB at 475-77 (accountant's preparation of expense report insufficient because it was based on union's representations rather than verified expenditures); *Safeway*, 353 NLRB at 471 (same).

amounts charged.<sup>24</sup> The Board has not established a specific set of steps that a union's challenge procedure must follow. However, in determining the adequacy of a challenge procedure, the Board considers whether any internal union procedure will cause undue delay, and whether the challenge will ultimately be heard by an independent arbitrator. In *Schreiber Foods*, the Board sustained the union's procedure because, although it required challengers to exhaust an internal appeal to the executive board, there was only a minimal delay before a challenge was heard by a neutral arbitrator due to expedient timelines.<sup>25</sup> The Board approved a virtually identical appeal process in *Food and Commercial Workers Locals 951, 7 and 1036 (Meijer, Inc.)*, where the unions maintained a reasonably expeditious internal appeal before presenting challenges to an impartial arbitrator.<sup>26</sup>

Here, the Union has not provided a reasonable challenge procedure. As an initial matter, the process as described by the Union, which requires challengers to orally explain their concerns to a Union official, who will pass them on to the Union's accountant, is so vague that it can hardly be characterized as a procedure. Further, unlike the procedures sustained in *Schreiber Foods* and *Meijer*, the process contains no time limits, and thus lacks any assurance of expediency. And it provides no guarantee that an impartial decisionmaker will adjudicate the challenge because the accountant is selected unilaterally by the Union.<sup>27</sup>

In addition, the Union failed to make its challenge procedure available to the Charging Party upon his request.<sup>28</sup> The Union's *Beck* notice states that the procedure for filing challenges would be provided upon request, yet the Union

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<sup>24</sup> *Carpenters Local 943 (Okla. Fixture Co.)*, 322 NLRB 825, 825 (1997). See also *Schreiber Foods*, 329 NLRB at 32 (the Board measures whether such an appeal process is adequate under the duty of fair representation standard).

<sup>25</sup> *Schreiber Foods*, 329 NLRB at 28, 32 & n.16.

<sup>26</sup> 329 NLRB 730, 730 n.4 (1999), *enforced in part*, 307 F.3d 760 (9th Cir. 2002).

<sup>27</sup> Cf. *Teachers AFT Local 1 v. Hudson*, 475 U.S. 292, 307-08 (1986) (union-selected arbitrator did not satisfy impartial decisionmaker requirement in public employee context). Although the Board does not consider *Hudson* binding on the issue of the challenge procedure required for non-public employees, *Hudson's* prescriptions can nonetheless serve as a guide. See *Schreiber Foods*, 329 NLRB at 32 (relying solely on duty of fair representation where judge relied on *Hudson*).

<sup>28</sup> There is a credibility dispute as to whether the Union explained the process orally, which cannot be resolved based on objective evidence.

never provided the procedure as requested by the Charging Party, despite allegedly promising to do so by the end of July.<sup>29</sup>

#### 4. Unlawful Pursuit of Discharge Before Complying with *Beck*

A union violates the Act by seeking or threatening discharge of a unit employee for nonpayment of dues before it has complied with its *Beck* obligations. For example, a union violates Section 8(b)(1)(A) and 8(b)(2) by causing an employee's discharge where it has failed to provide an initial notice of *Beck* rights, as outlined above.<sup>30</sup> A union also acts unlawfully by seeking an employee's removal where it has failed to notify the employee that his objection was sent to the wrong entity, and continues requiring the payment of full dues.<sup>31</sup> And Advice has authorized complaint where a union threatened discharge without first supplying post-objection financial disclosures necessary to determine whether to challenge the service fee.<sup>32</sup>

In the instant case, the Union's *Beck* failures hampered the Charging Party's ability to determine the basis for and to challenge his service fee rate. Thus, as described above, the Union failed to provide sufficient post-objection disclosures and failed to make a reasonable challenge procedure available. Under these circumstances, the Union could not lawfully seek his removal.<sup>33</sup> Thus, it violated Section 8(b)(1)(A) by

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<sup>29</sup> We agree with the Region that the failure to provide the challenge procedure falls within the Section 10(b) period because the Charging Party was not put on notice that the information would not be forthcoming until the July deadline passed.

<sup>30</sup> *Food & Commercial Workers Local 648 (Safeway, Inc.)*, 347 NLRB 868, 868 (2006).

<sup>31</sup> *Cal. Saw & Knife*, 320 NLRB at 248-49.

<sup>32</sup> *Steelworkers Local 9999 (Alcoa Engineering)*, Case 4-CB-9841, Advice Memorandum dated Oct. 10, 2007. See also *Meijer, Inc.*, 329 NLRB at 730 n.4, 756, where the judge concluded that the union violated 8(b)(1)(A) by attempting to enforce an arbitration award to collect service fees where it had not sufficiently disclosed affiliate expenditures (where no exceptions were filed concerning this finding).

<sup>33</sup> The deficiencies in the initial notice do not contribute to the finding that the Union unlawfully sought the Charging Party's discharge because they were cured, at least as to him, before this time. Specifically, once the Charging Party objected and the Union honored that objection, he no longer needed the procedure for doing so. *Cf. Am. Fed'n of Television & Recording Artists (KGW Radio)*, 327 NLRB 474, 474-75 (1999) ("it would elevate form over substance" to find that union was obligated to provide initial notice after employee had already exercised his right to object). And at that time, the Union informed him of the service fee rate that would be applied going forward, thus curing its

threatening to have the Charging Party discharged in December 2011 unless he paid the outstanding service fees in full. And it violated Section 8(b)(2) by sending a letter to the Employer demanding his discharge on a date certain. Although the Union may have rescinded this demand once the Charging Party paid the amount owed, its initial demand nonetheless constituted a discharge request. Since the Union was flatly prohibited from seeking his removal in light of its failure to fulfill its *Beck* duties, this original demand constituted an unlawful attempt to cause his discharge.<sup>34</sup>

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by: failing to provide a comprehensive initial *Beck* notice; failing to provide a breakdown of expenditures for its affiliates; failing to clarify, on request, whether the allocation of expenditures was based on audited financial information; and failing to make available a reasonable challenge procedure. The complaint should further allege that the Union violated Section 8(b)(1)(A) and 8(b)(2) by threatening the Charging Party with discharge, and attempting to cause his removal from employment, before fulfilling its *Beck* obligations.

/s/  
B.J.K.

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earlier failure to supply this information. Thus, the Charging Party was no longer harmed by the notice deficiencies by the time the Union sought back dues under threat of discharge.

<sup>34</sup> FOIA Ex. 5

