

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

**DATE:** June 19, 1990

Louis J. D'Amico, Regional Director, Region 5; Harold J. Datz, Associate General Counsel, Division of Advice

Chambersburg Hospital, Case 5-CA-20486 and District 1199P, National Union of Hospital Employees (Chambersburg Hospital), Case 5-CB-6296

536-2554-0100, 536-2581-3307, 536-2581-3342, 548-6040-8100

These cases were submitted for advice on whether the Union fulfilled its obligations under *CWA v. Beck*, \_\_U.S.\_\_, 128 LRRM 2729 (1988).

#### FACTS

The parties' current collective-bargaining agreement contains a union-security clause requiring the payment of an agency fee equal to the amount of monthly union dues as a condition of employment. The agreement also contains a provision for dues checkoff. In June 1988, approximately 25 covered employees, including the Charging Party, resigned from the Union, revoked their dues checkoff authorizations and ceased paying Union dues. The Union asserts that, from that point until December 1988, it advised these employees that they had a contractual obligation to pay agency fees.

On December 6, 1988, the Union sent the Employer a letter listing the 25 employees as being delinquent in their agency fees. Copies of that letter were also sent to the delinquent employees. The following week, the Employer advised these employees of their contractual obligations to pay dues or equivalent fees. None of the employees complied. On February 18, the Union requested the Employer to discharge the employees for their noncompliance with the contract. On February 21, 1989 the Employer gave the employees copies of the Union's discharge request letter and urged the employees to meet their contractual obligations.

A few days after receiving the Union's February 18 letters, the employees sent form letters to the Union raising an objection under *CWA v. Beck* to paying an amount equivalent to the Union's dues. The Employer then advised the Union that the employees would not be discharged in view of their Beck objections.

On April 4, the Union responded to the employees' Beck objections by mailing them a letter stating that 90 percent of the Union's dues or fees were used for representational purposes. The Union's letter further stated that the employees had a right to review the manner in which the Union's figure was calculated, and also had a right to appeal the Union's decision. The Union's appeal process culminated in binding arbitration, the cost of which would be borne equally by the Union and the appealing employee. Finally, the Union's letter requested the employees to notify the Union of their intent to review the Union's calculation process by April 20, 1989.

When the Union received no employee responses by that deadline, it requested the Employer to discharge the employees. The Employer again refused to discharge the employees because, in the Employer's view, the Union's discharge request had not complied with legal requirements.

On May 22, 1989, the Charging Party filed Section 8(b)(1)(A) and (2) charges alleging that the Union was unlawfully demanding the delinquent employees' discharge. On May 30, the Union filed a Section 8(a)(5) charge alleging that the Employer was unlawfully failing to enforce the contract by refusing to discharge the employees.

#### ACTION

We conclude that the Union unlawfully failed to fulfill its fiduciary obligations, including its obligations under Beck, and thus

unlawfully demanded the employee's discharge.

Under Beck, if a union has a union-security clause and expends part of its union-security collected funds on nonrepresentational activities, the union has a fiduciary obligation to notify nonmember employees that: 1) a stated percentage of union funds was spent in the last accounting year for nonrepresentational activities; 2) nonmembers can object to having their union-security collected payments spent on such activities; and 3) those who object will be charged only for representational activities.[1] The union must provide this information to nonmembers annually. If a member resigns after the annual notice, the union must separately provide the nonmember with an individual notice of this information.

In addition, after an employee files a Beck objection, the Union has an obligation to refrain from charging the employee for nonrepresentational activities and to provide information setting forth the union's major expenditures during the previous accounting year, distinguishing between representational and nonrepresentational activities. This financial information must be verified by an independent accounting firm. If the objecting nonmember employee disagrees with the union's determination, he or she must be given an opportunity to challenge that determination. One of the ways in which an employee can make such challenges is to file an unfair labor practice charge. In addition, the union may, if it wishes, establish a system of neutral arbitration to resolve such challenges. In all instances where an employee disagrees with the union's determination, the union must place the disputed amounts into an interest-bearing escrow account while the matter is being resolved. See, General Counsel Guidelines on Beck, *supra*, pp. 3-5.

Apart from Beck, a union has additional fiduciary obligations it must fulfill before seeking enforcement of a union-security clause. In order to lawfully obtain an employee's discharge under a union-security clause, a union must: 1) notify the employee of his/her dues delinquency, and provide a statement of the amount of dues owed, the period of time covered, and the method used to compute those amounts; 2) advise the employee when to make the required payments; and 3) advise the employee that failure to make the required payments will result in discharge.[2]

In the instant case, after the employees had resigned in June 1988, the Union failed to advise these new nonmembers of their right to make a Beck objection. However, this failure occurred outside the Section 10(b) period. Notwithstanding this failure to apprise, the employees learned of their Beck rights and made a Beck objection within the 10(b) period. The Union's response thereto was inadequate. First, the Union's letter failed to set forth major Union expenditures during the previous year, distinguishing between representational and nonrepresentational functions. In addition, the Union's appeal procedure required objecting employees to share the costs of the arbitration of the dispute. It should be argued that this cost sharing unlawfully interfered with the employees' rights under Beck.[3]

The Union also failed to fulfill its other fiduciary duties before seeking the employees' discharge under the agency fee clause. The Union failed to advise the employees what specific amounts they owed, what period of time the deficiencies covered, and the manner in which the total deficiencies was calculated. The Union also failed to provide a reasonable opportunity to pay the deficiencies.[4] Since the Union failed to honor its Beck obligations and its other fiduciary obligations, it could not lawfully seek the discharge of the employees.[5]

In sum the Union violated Section 8(b)(1)(A) by failing to respond properly to the employees' Beck objections, and the Union violate Section 8(b)(2) and 8(b)(1)(A) by seeking the discharge of the employees.[6] As a remedy, the Region should seek a rescission of the discharge request and a lawful and a complete response to the employees' Beck objection.

H.J.D.

---

[1] See also, General Counsel Guidelines on Beck, G.C. Memorandum 88-14, dated November 15, 1988.

[2] See, e.g., CWA, Local 9509 (Pacific Bell), 295 NLRB No. 27 (1989).

[3] See the attached memorandum in Teamsters, Local 580 (State Employees Credit Union), Case 7-CB-7807, Advice Memorandum dated May 11, 1990.

[4] CWA, Local 9509, supra.

[5] The fact that the employees failed to respond to the Union's letter by April 20 is of no moment, inasmuch as the Union's letter was deficient, i.e., it failed to give them sufficient information to intelligently challenge the Union's figures.

[6] [ FOIA Exemption 5