

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM OM 90-31

May 2, 1990

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Jerry M. Hunter, General Counsel

SUBJECT: Revision of Certain Board Notices and Publications
as a result of BECIC

On April 30, 1990, the Division of Administration began distributing to each field office revised versions of certain Board notices and publications. The documents revised are: A Guide to Basic Law and Procedures Under the National Labor Relations Act (the Basic Guide), Appendix A; Election Notice (NLRB Form 707), Appendix B; "The NLRB and YOU -- Unfair Labor Practices," Appendix C; "Your Government Conducts an Election," Appendix D; Notice of Election -- UD Election, Appendix E; Official Secret Ballot - UD Election, Appendix F; Tally of Ballots -- UD Election, Appendix G; Revised Tally of Ballots -- UD Election, Appendix H; and, Certification of Results of Election -- UD Election, Appendix I (Eye). The modifications in these documents are intended to better inform the public with respect to the state of existing law under the Act as interpreted by the Supreme Court.

In order to assist you in identifying the changes in these documents, attached, as Appendices A through I (Eye), are those portions of each document showing the effect of the recent revisions. Various cross-references in the Basic Guide referring to matters relating to union-security agreements have also been revised to conform to the revisions shown in Appendix A. The revision of these cross-references are not included in the attached Appendices. Additionally, in the section of the Basic Guide entitled "Examples of violations of Section 8(b)(4)(A)" (pages 33 and 34 of the unrevised version), the last example shown has been revised to reflect the fact that the Section 8(e) exemption discussed therein relates to picketing directed against employers in both the garment and the construction industries. Those portions of the original text that have been deleted are shown by strike-outs; new text is underlined. Because it is important that these revisions be thoroughly understood, each office should convene a training session to review the changes that have been made in the context of the Supreme Court's Beck decision.

Pursuant to previous instructions, all unrevised copies of the relevant notices and publications should have been destroyed. Only the revised versions should be utilized or distributed to the public.

If you have any questions concerning this memorandum, please contact your Assistant General Counsel.

Attachments

cc: NLRBU

Jerry M. Hunter
Jerry M. Hunter

MEMORANDUM OM 90-31

APPENDIX A
Modification of
A Guide to Basic Law and Procedures
Under the National Labor Relations Act

The Union Shop
Union Security

The Act permits, under certain conditions, a union and an employer to make an agreement, (called a union-security agreement), ~~requiring all employees to become members of the union that requires employees to make certain payments to the union in order to retain their jobs (Section 8(a)(3)).~~ The term "member" in this context means an employee who pays initiation fees and dues to the union. However, the Act does not authorize such agreements in States where they are forbidden by state law (Section 14(b)). A union-security agreement cannot require that applicants for employment be members of the union in order to be hired, and such an agreement cannot require employees to join or maintain membership in the union in order to retain their jobs. Under a union-security agreement, individuals choosing to be dues-paying non-members may be required, as may employees who actually join the union, to pay full initiation fees and dues within a certain period of time (a "grace period") after the collective-bargaining contract takes effect or after a new employee is hired. However, the most that can be required of non-members who inform the union that they object to the use of their payments for non-representational purposes is that they pay their share of the union's costs relating to representational activities (such as collective bargaining, contract administration, and grievance adjustment).

~~A union security agreement cannot require that applicants for employment be members of the union in order to be hired. The most that can be required is that all employees in the group covered by the agreement become members of the union within a certain period of time after the contract takes effect. This~~ The "grace period," after which the union-security agreement becomes effective, cannot be less than 30 days except in the building and construction industry. New employees may be required to join the union at the end of a 30-day grace period after they are hired. The Act allows a shorter grace period of 7 full days in the building and construction industry (Section 8(f)). A union-security agreement that provides a shorter grace period than the law allows is invalid, and any employee

discharged because of ~~nonmembership in the union~~ he or she has not complied with such an agreement is entitled to reinstatement.

Under a union-security agreement, employees who have religious objections to becoming members of a union or to supporting a union financially may be exempt from paying union dues and initiation fees. These employees may, however, be required to pay sums equal to union dues and initiation fees make contributions to a nonreligious, nonlabor tax exempt organization instead of making payments to a union. Unions representing such employees may also charge them the reasonable cost of any grievances processed at the employees' request.

For a union-security agreement to be valid, it must meet all of the following requirements:

1. The union must not have been assisted or controlled by the employer (see Section 8(a)(2) under "Unfair Labor Practices of Employers" on pages 17-21).
2. The union must be the majority representative of the employees in the appropriate collective-bargaining unit covered by such agreement when made.
3. The union's authority to make such an agreement must not have been revoked within the previous 12 months by the employees in a Board election.
4. The agreement must provide for the appropriate grace period.

Section 8(f) of the Act allows an employer engaged primarily in the building and construction industry to sign a union-security agreement with a union without the union's having been designated as the representative of the employees as otherwise required by the Act. The agreement can be made before the employer has hired any employees for a project and will apply to them when they are hired. As noted above, ~~new employees may be required to join the union after 7 full days~~ however, the union security provisions of a collective-bargaining contract in the building and construction industry may become effective with respect to new employees after 7 full days. If the agreement is made while employees are on the job, it must allow ~~nonunion~~ existing employees the same 7-day grace period to comply. As with any other union-security agreement,

the union involved must be free from employer assistance or control.

Agreements Collective-bargaining contracts in the building and construction industry can include, as stated in Section 8(f), the following additional provisions:

1. A requirement that the employer notify the union concerning job openings.
2. A provision that gives the union an opportunity to refer qualified applicants for such jobs.
3. Job qualification standards based on training or experience.
4. A provision for priority in hiring based on length of service with the employer, in the industry, or in the particular geographic area.

These four such hiring provisions may lawfully be included in collective-bargaining agreements contracts which cover employees in other industries as well.

Finally, pursuant to Section 14(b) of the Act, individual states may prohibit, and some states have prohibited, certain forms of union-security agreements.

FORMS REVISED

NLRB 707
707 - Spanish
4135 - English & Spanish
4910
4135 B
4888
5218
666
666 Spanish
4932
4921
4889

APPENDIX B
Modification of the Election Notice (NLRB Form 707)

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To refuse to do any or all of these things unless the Union and Employer, in a state where such agreements are permitted, enter into a lawful union-security clause agreement requiring employees to join the union pay periodic dues and initiation fees. Non-members who inform the union that they object to the use of their payments for non-representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

APPENDIX C
Modification of the pamphlet entitled
"The NLRB and YOU -- Unfair Labor Practices"

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Refusing to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security ~~clause~~ agreement requiring employees to ~~join the union~~ pay periodic dues and initiation fees. Non-members who inform the union that they object to the use of their contributions for non-representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

APPENDIX D
Modification of the pamphlet entitled
"Your Government Conducts an Election"

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To refuse to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security ~~clause~~ agreement requiring employees to ~~join the union~~ pay periodic dues and initiation fees. Non-members who inform the union that they object to the use of their payments for non-representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

APPENDIX E
Modification of the Notice of Election -- UD Election

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This election is to determine whether employees desire to continue in effect the union-~~shop~~ security agreement included within the provisions of the present collective bargaining contract ~~which requires membership in the union as a condition of employment.~~ Under such an agreement, the Employer and the Union may require that employees make certain lawful payments to the Union in order to retain their jobs.

APPENDIX F
Modification of the Official Secret Ballot -- UD Election

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Do you wish to withdraw the authority of your bargaining representative to require, under its agreement with the Employer, that ~~membership in the Union be a condition of employment~~ employees make certain lawful payments to the Union in order to retain their jobs?

APPENDIX G
Modification of the Tally of Ballots -- UD Election

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3. Votes cast in favor of withdrawing the authority of the bargaining representative to require, under its agreement with the Employer, that ~~membership in such Union be a condition of employment~~ employees make certain lawful payments to the Union in order to retain their jobs.

APPENDIX H
Modification of the Revised Tally of Ballots -- UD Election

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Votes cast in favor of withdrawing the authority of the bargaining representative to require, under its agreement with the Employer, that ~~membership in such Union be a condition of employment~~ employees make certain lawful payments to the Union in order to retain their jobs.

APPENDIX I (Eye)
Modification of the
Certification of Results of Election -- UD Election

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Pursuant to the authority vested in the undersigned by the National Labor Relations Board, IT IS, HEREBY CERTIFIED that a majority of employees eligible to vote have (not) voted to withdraw the authority of

[Space for name of Union]

to require, under its agreement with the Employer, that ~~membership in such Union be a condition of employment~~ employees make certain lawful payments to the Union in order to retain their jobs, in conformity with Section 8(a)(3) of the Act, as amended: