Teamsters Local 75, affiliated with the International Brotherhood of Teamsters, AFL-CIO (Schreiber Foods) and Sherry Lee Pirlott and David E. Pirlott. Case 30–CB–003077

March 21, 2017

SECOND SUPPLEMENTAL DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

This case, on remand from the United States Court of Appeals for the District of Columbia Circuit, involves two Charging Party employees who exercised their rights under the Supreme Court's decision in *Communications Workers of America v. Beck*, 487 U. S. 735 (1988) ("*Beck*"), by filing objections to the payment of dues that finance activities not germane to the Respondent Union's duties as their collective-bargaining representative. The issue here is whether the Respondent violated Section 8(b)(1)(A) of the Act by failing to furnish the Charging Parties, as *Beck* objectors, with sufficient information to enable them to determine whether the Respondent properly reduced their dues to an amount that financed only those activities that are germane to the Respondent's duties as their bargaining representative.

In its decision in this case, *Teamsters Local 75 (Schreiber Foods*), 329 NLRB 28 (1999) (*Schreiber I*), the Board held that the Respondent provided Charging Parties David E. and Shirley Lee Pirlott with sufficient financial information for years 1988 and 1989 to enable them to determine whether to challenge the Respondent's dues reduction calculations. Accordingly, the Board dismissed this 8(b)(1)(A) complaint allegation. The Board, however, remanded to the judge for further proceedings a separate allegation that the Respondent violated Section 8(b)(1)(A) by charging the Pirlotts for Respondent activities outside the bargaining unit, including organizing expenses. In *Teamsters Local 75 (Schreiber Foods*), 349 NLRB 77 (2007) (*Schreiber II*), the Board addressed the remanded allegation and found that the Respondent violated Section 8(b)(1)(A) by charging the Pirlotts for some of its organizing expenses. The Pirlotts filed a petition in the United States Court of Appeals for the District of Columbia Circuit seeking review of the Board's dismissal of the financial disclosure allegation in *Schreiber I*; the Respondent petitioned for review of the organizing expenses violation found in *Schreiber II*; and the Board cross-applied for enforcement of the violation found in *Schreiber II.*

On April 15, 2008, the court issued a decision in *Pirlott v. NLRB*, 522 F.3d 423, enforcing the Board's decision in *Schreiber II*. With respect to *Schreiber I*, the court noted that the parties agreed that the Board's decision on the question of whether the Respondent's financial disclosures were adequate to enable the Pirlotts to determine whether the Respondent had properly reduced their dues should be vacated in light of the court's decision on a similar issue in *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000). Id. at 432. In accord with the parties' agreement, the court vacated this aspect of the Board's order in *Schreiber I* and remanded the case to the Board for reconsideration in light of *Penrod*. Id. at 437.

On August 27, 2015, the Board advised the parties that it had accepted the court's remand and invited them to file statements of position with respect to the remanded issue.[1] The General Counsel, the Pirlotts, and the Respondent filed statements of position.

DISCUSSION

The Supreme Court in *Beck* ruled that a union may not, over the objection of employees obligated to pay dues pursuant to a contractual union-security clause, expend funds collected from the objectors on activities unrelated to collective bargaining, contract administration, or grievance adjustment. 487 U.S. at 752–754. To comply with *Beck* and its duty-of-fair-representation framework, the Board in *California Saw & Knife Works*[2] set forth a three-stage procedure a union must follow to inform employees how *Beck* objections will be processed. First is the preobjection stage when the union must inform employees, before it can collect dues and fees from them under a union-security clause, that they have the right to refrain from having their dues spent on nonrepresentational activities and that their dues will be reduced accordingly if they file an objection. Employees must be given sufficient information at this stage to "enable [them] to intelligently decide whether to object." 320 NLRB at 233. Stage 2 is the postobjection period and involves unit employees who have filed objections. The union must inform objectors at this stage of the percentage reduction of their dues and fees, the basis for the calculation, and their right to challenge the figures. Id. It must also provide a sufficient listing of its "major cat-

[1] Following the court's remand, the case was in settlement discussions for several years, during which, according to the Respondent, Teamsters Local 75 merged with Teamsters Local 662. However, the parties were unable to resolve the specific allegations in *Schreiber I*.

[2] 320 NLRB 224 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

egories" of expenditures, designating which ones it deems chargeable and nonchargeable, so that the objectors can decide whether to challenge the union's dues-reduction calculations. Id. at 239–240; see also *Office Employees Local 29 (Dameron Hospital Assn.)*, 331 NLRB 48, 49 (2000). Objectors who disagree with or question the stage 2 information and file a challenge proceed to stage 3, "where the union will bear the burden of proving that [its] expenditures are chargeable to the degree asserted." *CWA Local 9403 (Pacific Bell)*, 322 NLRB 142, 144 (1996), enfd. sub nom. *Finnerty v. NLRB*, 113 F.3d 1288 (D.C. Cir. 1997), cert. denied 552 U.S. 995 (1997).

The allegation in this case arises at stage 2. As discussed in *Schreiber I*, 329 NLRB at 28, the Pirlotts were employees of Schreiber Foods and members of a production and maintenance bargaining unit represented by the Respondent. On September 20, 1989, the Pirlotts filed *Beck* objections with the Respondent and received an October 19 written response stating that their dues would be reduced by 1.1 percent, in accordance with the Respondent's 1988 audit that itemized its expenditures and identified which were for activities the Respondent deemed nonrepresentational. Attached to the letter was a one-page schedule of the Respondent's 1988 total expenditures prepared by the auditor, which, as set forth at 329 NLRB at 45, was broken down into 14 categories. For each expenditure category, the Respondent identified the amount that it considered nonrepresentational and thus "nonchargeable" to the Pirlott objectors. The breakdown specified 11 categories as totally chargeable, one category as totally nonchargeable, and 2 categories, including a "per capita tax" the Respondent paid to affiliated entities,[3] as partially chargeable and partially nonchargeable. In addition, the letter informed the Pirlotts of the Respondent's procedure for challenging its chargeability determinations. Following an audit of its 1989 expenditures, the Respondent reduced the Pirlotts' dues by 3.2 percent as reflected in a similar financial statement provided to them showing the amounts spent that year on activities determined to be chargeable and nonchargeable.

The Pirlotts rejected the Respondent's financial disclosure statements as "woefully inadequate," asserting that they failed to explain how the Respondent "arrived at [its] figures" or to provide any information about its three affiliates. The judge agreed, finding that the 1988 and 1989 statements did not disclose any details beyond the major categories of union expenditures and thus failed to provide the Pirlotts with sufficient information to enable them to make an informed choice as to whether to file a challenge. 329 NLRB at 47. With respect to the per capita tax category, the judge ruled that the Respondent should have separated it "by the recipient of the tax and how the Respondent determined [the amount that] was nonchargeable." Accordingly, the judge found that the Respondent violated Section 8(b)(1)(A) and (2) of the Act. Id.

The *Schreiber I* Board reversed, finding that the Respondent was only required to provide the Pirlotts with information sufficient to enable them to determine whether to challenge the Respondent's figures, and that what the Respondent provided them was "clearly sufficient to enable" them to make that determination. Id. at 30. The Board held that because the Respondent's disclosures comported with *California Saw*'s requirement to disclose "major category" information, including the per capita tax expenditure disclosure found sufficient in *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950, 953–954 (1999) (*Dyncorp I*), the Respondent satisfied its duty of fair representation to the Pirlotts. Id. at 30–31.

The District of Columbia Circuit disagreed. Following the issuance of *Schreiber I*, the court had granted review of *Dyncorp I* and rejected the Board's position regarding the adequacy of stage 2 information. The court held in *Penrod v. NLRB,* supra (the title of *Dyncorp I* on review) that it was not enough for the union in that case to simply provide objectors with an audited schedule of its major categories of expenditures and the amounts and percentages of each category that it deemed chargeable and nonchargeable. Rather, for objectors to make an informed decision on whether to challenge the union's figures, the court held that the union was required to provide the objectors with a "detailed explanation of *how* it calculated the allocation of its expenditures." *Penrod*, supra, 203 F.3d at 46 (emphasis added). The *Penrod* court reached the same conclusion with respect to the per capita taxes that the union in that case submitted to affiliated entities. Having disclosed that over 90 percent of the dues paid to affiliates were chargeable to objectors, the court held that the union was required to "explain how its affiliates used the money." Id. at 47. The court remanded *Dyncorp I* to the Board for further proceedings consistent with its decision.

Following the remand, the Board adopted the *Penrod* court's decision as the law of the case. Specifically, the Board found that the union violated Section 8(b)(1)(A) by failing to provide the objectors with "adequate information concerning its expenditures and those of its affili-

[3] The per capita tax is the amount that the Respondent pays, for each of its members, to three affiliated entities—the International Brotherhood of Teamsters (International), the Central Conference of Teamsters (Conference), and the Wisconsin Joint Council 39 (Joint Council).

ates with which it shared the money from dues and fees." *Teamsters Local 166 (Dyncorp Support Services*), 333 NLRB 1145 (2001) (*Dyncorp II*).

In light of its intervening decision in *Penrod*, the District of Columbia Circuit agreed with the parties here that it was appropriate to vacate the Board's order in *Schreiber I* with respect to the stage 2 disclosure issue so that the Board could reconsider its position on remand.[4] *Pirlott v. NLRB*, 522 F.3d at 432. Significantly, prior to the remand of *Schreiber I* the Board had done just that in *Teamsters Local 579 (Chambers & Owen),* 350 NLRB 1166 (2007), which issued after *Penrod*. In *Chambers & Owen* the issue was whether the union was required to provide a *Beck* objector "with information concerning its affiliates' activities and the extent to which those activities were chargeable or nonchargeable prior to [the objector] filing a challenge to the [u]nion's reduced dues and fees calculation" (i.e., at stage 2 rather than stage 3). Id. at 1168. The Board acknowledged that "under current Board law, a union that pays per capita taxes to its affiliates is not required at the second stage to provide *Beck* objectors with information pertaining to how its affiliates determined the chargeability to the objectors of the per capita taxes that the affiliates received and spent." Id. Agreeing with *Penrod*, however, the Board stated in *Chambers & Owen* that "[w]e now hold that this affiliate information must be furnished to a *Beck* objector at the second stage so that he or she can determine *whether* to file a challenge," id. (emphasis in original), and found that the union's failure to provide such information violated Section 8(b)(1)(A) and its duty of fair representation. Id. at 1169, 1171.[5]

We reach the same conclusion here, not only with respect to the per capita tax expenditure disclosures of the Respondent's affiliates, which the Respondent has failed to set forth in its disclosure, but also with respect to the *Pirlott* court's remand for the Board to consider the adequacy of the Respondent's disclosure of its own dues expenditures. As the Board explained in *Chambers & Owen*, "[j]ust as the [u]nion's providing [the objector] with the percentage figures reflecting its determinations of its *own* total chargeable and nonchargeable expenditures would have been insufficient, providing the same general percentage figures for its affiliates, without providing supporting information about the purposes for which the assertedly chargeable amount will be expended, is also inadequate." Id. at 1170 (emphasis added). Indeed, in *Chambers & Owen*, the Board insisted upon, in addition to a listing of affiliates' major spending categories, "a detailed explanation of how the affiliates' expense allocations were calculated." Id. It logically follows that if a union must provide a detailed account of how its affiliates' allocations were calculated that is sufficient to allow objectors to determine whether to file a challenge, it must also do so with respect to its own categories of expenditures. Notably, many of the broad expenditure categories within the Respondent's disclosure suffer from facially similar problems as those found by the court in *Penrod* as to whether they provide a sufficient basis for objectors to decide whether to challenge their dues reduction. See 203 F.3d at 45–46; see also *Dyncorp II*, supra at 1146 (outlining how a union may comply with *Penrod*'s requirements for detailing its expenditures).

Accordingly, consistent with *Chambers & Owen* and the *Pirlott* court's instructions on remand, we find that the Respondent violated Section 8(b)(1)(A) by failing to provide the Pirlotts with sufficient information as to how it determined the chargeability and nonchargeability of its own dues expenditures and those of its affiliated entities with respect to the per capita dues transferred to them.[6]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 4 set forth in *Schreiber I*, 329 NLRB at 33, and renumber the subsequent Conclusion of Law:

"4. The Respondent violated Section 8(b)(1)(A) by failing to inform objecting nonmember unit employees

[4] Specifically, on remand, the parties argued as follows. The General Counsel took no position on the issue. The Pirlotts argue that the Board should apply *Penrod* to find that the Respondent's financial disclosures were inadequate and order restitution for excessive amounts of dues seized from them from 1989 to the present. The Respondent argues, as a procedural matter, that the remanded issue should be dismissed due to laches, asserting that the "Board and Subregion's unexplained delays throughout this quarter century have made it impossible for the Union to adequately protect its interests." In this regard, the Respondent notes that having merged with Teamsters Local 662, it no longer exists and relevant documents and files are missing or have been destroyed. With respect to the merits, the Respondent urges the Board to reject *Penrod* as erroneously decided and affirm its decision that the financial information provided to the Pirlotts was adequate.

[5] To the extent that *Dyncorp I* and *Schreiber I* held to the contrary, the Board overruled both cases. Id. at 1170–1171.

[6] We do not find, as the judge did in *Schreiber I*, that the Respondent also violated Sec. 8(b)(2). There is no evidence that the Respondent caused or attempted to cause Schreiber Foods to discriminate against an employee in violation of Sec. 8(a)(3), as prohibited by Sec. 8(b)(2).

We reject the Respondent's laches defense. The Board and the courts have long held that the defense of laches does not lie against the Board as an agency of the United States Government. *Entergy Mississippi, Inc*., 361 NLRB No. 89, slip op. at 2 fn. 5 (2014) (citing *NLRB v. J.H. Rutter-Rex Mfg. Co*., 396 U.S. 258 (1969)). Further, the delay in this proceeding was due in large part to the 8-year period between 2000 and 2008 when the Pirlotts' petition for review in *Schreiber I* was pending before the court, and the several years of settlement discussions between the parties that took place after the court's 2008 remand.

under *Communications Workers v. Beck*, 487 U.S. 735 (1988), from whom it sought to collect dues and fees, of the following information at the objection stage: the major categories of its expenditures, the percentage of each category that it considers chargeable and nonchargeable, and a detailed explanation of how it calculates its allocation of expenditures; the names of its affiliates and other entities with which it shares income from dues and fees, the amounts of income shared, the major categories of expenditures of each affiliate and other entity and the percentages of each category those affiliates and other entities consider chargeable and nonchargeable, and a detailed explanation of how the affiliates and other entities calculated their expenditure allocation."

AMENDED REMEDY

Having found that the Respondent violated Section 8(b)(1)(A), we shall order it to cease and desist and to provide Charging Parties Sherry Lee Pirlott and David E. Pirlott with the following sufficiently verified[7] information for 1988 and 1989: the major categories of its expenditures, the percentage of each category that it considers chargeable and nonchargeable, and a detailed explanation of how it calculates its allocation of expenditures; the names of its affiliates and other entities with which it shares income from dues and fees, the amounts of income shared, the major categories of expenditures of each affiliate and other entity and the percentages of each category those affiliates and other entities consider chargeable and nonchargeable, and a detailed explanation of how the affiliates and other entities calculated their expenditure allocations.[8]

SUPPLEMENTAL ORDER

The National Labor Relations Board orders that the Respondent, Teamsters Local 75, affiliated with the International Brotherhood of Teamsters, AFL–CIO, Green Bay, Wisconsin, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to inform objecting nonmember unit employees under *Communications Workers v. Beck*, 487 U.S. 735 (1988), from whom it seeks to collect dues and fees, of the following information at the objection stage: the major categories of its expenditures, the percentage of each category that it considers chargeable and nonchargeable, and a detailed explanation of how it calculates its allocation of expenditures; the names of its affiliates and other entities with which it shares income from dues and fees, the amounts of income shared, the major categories of expenditures of each affiliate and other entity and the percentages of each category those affiliates and other entities consider chargeable and nonchargeable, and a detailed explanation of how the affiliates and other entities calculated their expenditure allocations.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Pirlotts with the following sufficiently verified information for 1988 and 1989: the major categories of its expenditures, the percentage of each category that it considered chargeable and nonchargeable, and a detailed explanation of how it calculated its allocation of expenditures; the names of its affiliates and other entities with which it shared income from dues and fees, the amounts of income shared, the major categories of expenditures of each affiliate and other entity and the percentages of each category those affiliates and other entities considered chargeable and nonchargeable, and a detailed explanation of how the affiliates and other entities calculated their expenditure allocations.

(b) Within 14 days after service by the Region, post at its offices in Green Bay, Wisconsin, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an internet site, and/or

[7] No allegation was made that the information initially provided by the Respondent was not properly verified. See *United Food and Commercial Workers Union Local 4 (Safeway, Inc.)*, 363 NLRB No. 127 (2016), as modified by 365 NLRB No. 32 (2017); and *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), reconsideration denied 327 NLRB 802 (1999), petition for review dismissed 1999 WL 325508 (D.C. Cir. 1999).

[8] The Respondent asserts that it no longer has the records necessary to provide this information. We leave to compliance the determination of what information the Respondent has and must provide. To the extent that the Respondent contends that its merger with Teamsters Local 662 has extinguished its remedial obligations, we reject that contention. See *Sheet Metal Workers Local 75 (Owl Contractors*), 290 NLRB 381, 385–387 (1988).

Because the complaint allegation was confined to the years 1988 and 1989, we reject the Pirlotts' request for remedial relief extending beyond this period.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

other electronic means, if the Respondent customarily communicates with employees whom it represents by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director for Region 18 sufficient copies of the notice for posting by Schreiber Foods, if willing, at all places at its Green Bay, Wisconsin facility where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 21, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to inform objecting nonmember unit employees under *Communications Workers v. Beck*, 487 U.S. 735 (1988), from whom we seek to collect dues and fees, of the following information at the objection stage: the major categories of our expenditures, the percentage of each category that we consider chargeable and nonchargeable, and a detailed explanation of how we calculate our allocation of expenditures; the names of affiliates and other entities with which we share income from dues and fees, the amounts of income shared, the major categories of expenditures of each affiliate and other entity and the percentages of each category those affiliates and other entities consider chargeable and nonchargeable, and a detailed explanation of how the affiliates and other entities calculate their expenditure allocations.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL provide Sherry Lee Pirlott and David E. Pirlott with the following information for 1988 and 1989: the major categories of our expenditures, the percentage of each category that we considered chargeable and nonchargeable, and a detailed explanation of how we calculated the allocation of expenditures; the names of affiliates and other entities with which we shared income from dues and fees, the amounts of income shared, the major categories of expenditures of each affiliate and other entity and the percentages of each category those affiliates and other entities considered chargeable and nonchargeable, and a detailed explanation of how the affiliates and other entities calculated their expenditure allocations.

TEAMSTERS LOCAL 75, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL–CIO

The Board's decision can be found at www.nlrb.gov/case/30-CB-003077 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.