

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

S.A.M.

DATE: January 22, 2019

TO: Valerie Hardy-Mahoney, Regional Director  
Region 32

FROM: Jayme L. Sophir, Associate General Counsel  
Division of Advice

SUBJECT: United Food & Commercial Workers Union, 536-2581-3307-5010  
Local 5 (Safeway Store) 536-2581-3307-5050  
Case 32-CB-219981

This case was submitted for advice as to whether the Union, United Food & Commercial Workers, Local 5, violated Section 8(b)(1)(A) of the Act by providing the Charging Party with a deficient initial *Beck*<sup>1</sup> notice because the notice did not include the percentage reduction in dues and fees if an employee were to become a *Beck* objector, or a financial breakdown of chargeable and nonchargeable expenses. We conclude that information about the percentage reduction in dues and fees, but not an additional financial breakdown, is essential to an employee's ability to decide on an informed basis whether to become a *Beck* objector, and that requiring unions to provide a good faith determination of the amount of the reduction in their initial *Beck* notice is not overly burdensome. Therefore, complaint should issue, absent settlement, to put to the Board the issue of whether the Union violated its duty of fair representation by failing, in its initial *Beck* notice, to inform employees of the sum amount of dues and fees that would be reduced for objecting employees.

**FACTS**

The Charging Party was hired as a clerk at Safeway grocery store in January 2018.<sup>2</sup> In February, the Union gave [REDACTED] a Welcome Packet that included a Union membership application, benefits enrollment form, and New Member Information Packet. In the Information Packet, there was various information about the Union and the collective-bargaining agreement, as well as a paragraph stating, in pertinent part, the following:

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

<sup>2</sup> All subsequent dates are in 2018.

You may also want to know that you have the right to refrain from being a member of the Union and to pay an initiation fee and a monthly dues fee that is slightly less than the full initiation fee and regular monthly dues as a condition of employment. This is the only obligation under a union security clause. This fee, which is authorized by federal law (The National Labor Relations Act) is your fair share of the costs related to collective bargaining contract administration, grievance adjustment, union administration, organizing and other activities reasonably related to Local 5's representational duties (chargeable expenses). Financial core non-members only may file objections to funding expenditures for nonrepresentational activities such as political activities and non-working related lobbying and legislative activities (non-chargeable activities.) Non-members who choose to file objections must file them in writing with Local 5's office in San Jose...

The Charging Party took no action in response to the Union's welcome packet.

On March 28, the Union sent the Charging Party a letter stating that (b) (6), (b) (7)(C) had failed to fulfill (b) (6), (b) (7)(C) financial obligation to the Union and that it would seek (b) (6), (b) (7)(C) termination if (b) (6), (b) (7)(C) did not meet (b) (6), (b) (7)(C) financial obligation by April 11. In response, the Charging Party sent a letter to the Union on April 10 stating that (b) (6), (b) (7)(C) did not wish to join the Union and was objecting, pursuant to *Beck*, to paying any fees beyond (b) (6), (b) (7)(C) share of the Union's costs of collective bargaining, contract administration, and grievance adjustment. On April 11, the Union sent the Charging Party a letter acknowledging (b) (6), (b) (7)(C) request for financial core/non-member status, and a letter with the reduced fee amount for objectors, the procedure for challenging the chargeable expenditures calculation, and a statement of expenses and allocations created by an auditor.

### ACTION

We conclude that the Region should issue complaint, absent settlement, and argue to the Board that the Union's initial *Beck* notice was deficient because it failed to include a good faith determination of the sum amount of the reduced fees and dues employees need to decide whether to become objectors. The Region should not argue that the Union should be required to include a breakdown of chargeable and nonchargeable expenses 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 right to be or remain nonmembers.<sup>3</sup> It must also

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

inform them of their *Beck* rights: namely, that nonmembers have the right to (1) object to paying for union activities not germane to the union's representational duties and to obtain a reduction in fees for such activities; (2) be given sufficient information to intelligently decide whether to object; and (3) be apprised of any internal union procedures for filing objections.<sup>4</sup> If an employee chooses to object, the union must then apprise the employee of "the percentage of the reduction, the basis for the calculation, and the right to challenge these figures."<sup>5</sup>

The Board does not currently require any additional information in a union's initial *Beck* notice beyond the three requirements described in *California Saw & Knife Works*.<sup>6</sup> However, the D.C. Circuit has held that an initial *Beck* notice must apprise potential objectors of the percentage of union dues chargeable to them in order for potential objectors to gauge the propriety of a union's fee.<sup>7</sup> In *Penrod*, the D.C. Circuit found the question of initial *Beck* requirements to be "squarely controlled by" the Supreme Court's decision in *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986), where the Court said, in a case dealing with public sector employees, that: "[b]asic considerations of fairness...dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee."<sup>8</sup> In *Kroger*, the Board considered *Penrod* and acknowledged that "basic considerations of fairness" inform a union's duty of fair representation in providing sufficient *Beck*

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<sup>4</sup> *California Saw & Knife Works*, 320 NLRB at 233.

<sup>5</sup> *Id.*

<sup>6</sup> *Food & Commercial Workers Local 700 (Kroger Limited Partnership)*, 361 NLRB 420 (2014) (adhering to the precedent in *California Saw & Knife* regarding the requirements for initial *Beck* notices), *order vacated by Sands v. NLRB*, 825 F.3d 778 (D.C. Cir. 2016).

<sup>7</sup> *See, e.g., 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).

<sup>8</sup> *Penrod*, 203 F.3d at 47.

notice to employees,<sup>9</sup> but declined to follow the D.C. Circuit in requiring the additional information at the initial notice stage.<sup>10</sup>

In the General Counsel's view, it is difficult for an employee to make an informed decision about whether to become a *Beck* objector without knowing the amount of savings that would result from that decision.<sup>11</sup> The Region should therefore urge the Board to overrule *Kroger* and require that a union must provide the reduced amount of dues and fees for objectors in the initial *Beck* notice so that an employee can make an informed decision as to whether to become a *Beck* objector. Usually, the union has that amount easily at hand, because there is a *Beck* system in place and there are other objectors for whom the appropriate fee has been determined. If the union does not yet have the exact fee calculated (because it has, as yet, no objectors), it should make a good faith determination as to what the amount will be. This good faith determination need not be based on precise calculations or an independent auditor's report, but the union must have utilized a reasoned analysis to determine the figure and the union ought to be able to explain to the employee how it derived the figure should the employee ask. If an employee becomes a *Beck* objector, the union then has the duty to provide the actual percentage reduction, the basis for the calculation,

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<sup>9</sup> See *Teamsters Local 579 (Chambers & Owen Inc.)*, 350 NLRB 1166, 1170 (2007) ("we believe that the concept of 'fairness' fits comfortably within the duty of fair representation"); *Kroger*, 361 NLRB at 424 (stating that the "fairness" rationale of *Hudson* is not irrelevant to the Board's balancing the competing interests at stake in considering the union's initial notice obligations under the duty of fair representation).

<sup>10</sup> See *Kroger*, 361 NLRB at 422 (holding that a union does not need to inform employees in the initial *Beck* notice of the specific details of the reduced fees and dues for objectors, despite careful consideration of the D.C. Circuit's holding otherwise).

<sup>11</sup> See e.g., *Penrod*, 203 F.3d at 47 (potential objectors must be told the percentage of dues chargeable to them, "for how else could they 'gauge the propriety of the union's fee,'" citing *Hudson*); *Kroger*, 361 NLRB at 426 (acknowledging that information about the precise reduction in dues and fees may be motivating certain employees' decisions about whether to become *Beck* objectors) and at 429 & n.5 (Members Miscimarra and Johnson, concurring in part and dissenting in part) (noting that employees need information directly relevant to the exercise of their rights and that the percentage of nonrepresentational expenses may affect an employee's decision to object). Cf. *Chambers & Owen Inc.*, 350 NLRB at 1168 (employees must be given the breakdown by major category of chargeable versus nonchargeable expenditures and a description of how the allocations were calculated before they challenge the calculations so that they can determine *whether* to file a challenge).

including the allocation of major categories as chargeable and nonchargeable, and information about the objector's right to challenge the figures.<sup>12</sup>

The requirement that a union provide objectors with a good faith determination of the amount of the reduced fee appropriately balances employees' need for the information to make an informed choice with the modest burden to the union to provide the fee or estimate. The benefit to an employee's ability to make an informed decision about whether to become an objector does not significantly increase, on the other hand, by having the full breakdown of chargeable versus nonchargeable expenditures.<sup>13</sup> Moreover, unlike requiring a good faith estimate of the fee (for those unions that haven't already done the actual calculation), requiring a breakdown can be an expensive and time-consuming undertaking for a union that has not yet done it.<sup>14</sup> Additionally, we note that while local unions are entitled to utilize a "local presumption" that the percentage of a local's expenditures chargeable to objectors is at least as great as the chargeable percentage of its parent union,<sup>15</sup> there are independent unions for which this presumption cannot lessen the burden of having to make the calculation.

Here, the Union's initial *Beck* notice properly informed the Charging Party of [REDACTED] right to remain a nonmember and pay only the portion of [REDACTED] dues associated with representational activities. The initial letter also included adequate instructions for invoking [REDACTED] *Beck* rights, namely that [REDACTED] should inform the Union in writing if [REDACTED] wished to become an objector. However, the Region should urge the Board to find that the Union's initial *Beck* notice was deficient in that it did not provide sufficient

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<sup>12</sup> *California Saw & Knife Works*, 320 NLRB at 233 (setting out the three-step process for a union's obligations pursuant to *Beck*); *Chambers & Owen Inc.*, 350 NLRB at 1168 (modifying the three-step procedure to require unions to provide information about the chargeability of major categories of expenditures, including affiliate expenditures, to employees at step 2, instead of after an employee challenges the union's calculations).

<sup>13</sup> Indeed, providing too much additional information in an initial notice could adversely overwhelm employees with information if they could no longer easily find the statement of rights and the reduced fee amount within the notice. See e.g., *California Saw & Knife Works*, 320 NLRB at 234 n.55 (a notice must be "reasonably calculated to apprise" the employees of their *Beck* rights).

<sup>14</sup> See e.g., *Kroger*, 361 NLRB at 427 (describing the burden to unions in creating the calculations, especially for unions who have not previously had *Beck* objectors).

<sup>15</sup> See *Thomas v. NLRB*, 213 F.3d 651 (D.C. Cir. 2000) (upholding the union's use of the local presumption); *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474, 477 n.15 (1999) (describing the local presumption).

information to the Charging Party for [REDACTED] to make an informed decision about whether to object because the notice did not inform [REDACTED] of the potential savings [REDACTED] would incur if [REDACTED] objected.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by failing to provide the Charging Party with an adequate *Beck* notice before seeking to collect dues.

/s/  
J.L.S

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