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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Jeremy Brown,

Charging Party,

and

National Association of Broadcast Employees
and Technicians - The Broadcasting and Cable
Television Workers Sector of the
Communications Workers of America, AFL-
CIO, Local 51,

Respondent.

Nos. 19-CB-244528 and 19-CB-247119

**RESPONDENT'S BRIEF IN SUPPORT
OF CROSS-EXCEPTIONS**

Respondent, National Association of Broadcast Employees and Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO ("Union" or "Local 51") submits this brief in support of its cross-exceptions.

ARGUMENT IN SUPPORT OF CROSS -EXCEPTION 1

The Board should find no violation by Respondent.

A. SUMMARY OF FACTS

The Union represents bargaining units at a number of television and radio stations on the West Coast, as well as network daily hires in the Western States. The Union is a local union

affiliated with the national union known as The National Association of Broadcast Employees and Technicians (“NABET”), the Broadcasting and Cable Television Workers Sector of the Communications Workers of America (“CWA”).

At all relevant times, NABET-CWA has had collective bargaining agreements with ABC, Inc. Local 51’s role, with respect to the ABC, Inc. units, is to represent the covered employees who reside in the Western States. The collective bargaining agreement includes a union security clause. With respect to daily hires, the union security clause applies after 20 days of employment within a calendar year, or 30 days of employment in two consecutive calendar years, provided that no person is required to become a member earlier than 30 days from the first date of hire. (Joint Exhibit 1, p. 14 of the exhibit [p. 4 of the contract], at the top of the page.)

With respect to ABC, Inc. employees, CWA collects dues directly through the dues checkoff process from the employer. CWA handles administration of how those funds are used and distributed, including forwarding the appropriate portions to the affiliated local unions who participate in servicing the ABC, Inc. bargaining units. CWA also handles the process of determining what amounts are used for non-representational activities, reporting the allocations to the *Beck* objectors in the bargaining units, and providing the *Beck* objectors with rebates for the amount of dues used for non-representational activities. Respondent, Local 51, does not itself use any local dues money for non-representational activities. Respondent, at the Local level, is not involved in CWA’s process of providing *Beck* objectors with accounting of amounts used for non-representational activities.

Charging Party Jeremy Brown is a daily-hire employee of ABC Inc. His employment is covered by the collective bargaining agreement between NABET-CWA and ABC Inc. The Union’s business records of correspondence with Mr. Brown includes a November 10, 2008 welcome letter to Mr. Brown and enclosures, Respondent’s Exhibit 1. The welcome letter is a standard letter the Union has used at all relevant times for new daily hires covered by the ABC, Inc. contract. Among other things, the welcome letter notifies the addressee of the union security clause; states the amounts of the initiation fee and the dues (2.25 percent of earnings); and

identifies alternative methods of paying the initiation fee. The packet encloses a checkoff authorization form; a membership application form; and a CWA brochure entitled “Your Rights with Respect to Union Representation, Union Security Agreements and Agency Fee Objections” (hereinafter called the “Your Rights brochure”) at the last two pages of Respondent’s Exhibit 1.

Local 51 President Carrie Biggs-Adams testified that the Your Rights brochure is enclosed with the welcome letter as a standard practice of the Union. Under the heading “Agency Fee Objections,” the Your Rights Brochure provides instructions for how a bargaining unit member may file a *Beck* objection – that is, simply sending CWA a letter. The address is provided (“Objections must be sent to the Agency Fee Administrator, CWA, 501 Third Street, NW, Washington, DC 20001-2797”). Mr. Brown did not respond.

After determining that Brown had worked the threshold amount for daily hires, on February 7, 2019, Ms. Biggs-Adams sent another standard welcome letter with enclosures to Mr. Brown, including the Your Rights brochure (Respondent’s Exhibit 2). As the ALJ correctly found, the evidence supports that the brochure was included with Respondent’s February 7 and April 1 letters, and the General Counsel does not dispute that it was. See n. 5 of the proposed decision. Again, the Your Rights brochure provided Mr. Brown with instructions how and where he could file a *Beck* objection if he so desired, including the CWA address. (See p. 7 of Respondent’s Exhibit 2.) Again, Mr. Brown did not respond.

On April 1, 2019, Ms. Biggs-Adams sent Mr. Brown a follow-up letter, with standard enclosures, including the Your Rights brochure. (Respondent’s Exhibit 4).

On April 4, 2019, Mr. Brown sent Ms. Biggs-Adams a lengthy email (GC Exhibit 5). In the email, Mr. Brown first referred to being “with ESPN” for 25 years, and he made some confusing comments about working for ESPN. (Mr. Brown now admits that his employer has at all relevant times been ABC, Inc.) Mr. Brown asked why he would have back dues. He stated he was willing to join NABET and pay the dues that are 2.5% [*sic*] from every check, but I need clarification when it comes to the other fees. I should not have to pay any type of back dues...” The email wrongly accused Ms. Biggs-Adams of threatening blacklisting in the April 1 letter,

which was false, then stated, “I object to the collection and expenditure by the union of a fee for any purpose other than my pro rata share of the union’s costs of collective bargaining, contract administration, and grievance adjustment...” The email requested the amounts “with the reductions for Beck made” and “notice of the reduced amount I am owed [sic]...” In the concluding paragraph, the email stated:

So in conclusion, I’m willing to join the union because of the agreement with ESPN [sic], and pay the dues at 2.5% [sic; dues are 2.25 percent] from here on out or as soon as the paperwork arrives. I should not have to pay any back dues because I was never part of your union until now, when it comes to the initiation fees we need to reevaluate the amount owed. Please let me know as soon as possible[.]

It is undisputed that the Union has not tried to collect back dues from Mr. Brown.

On April 5, 2019, Mr. Brown sent Ms. Biggs-Adams another email advising that “I did sign and fill out the application to join nabet with you guys but it’s under duress [sic].. that way I can still be able to work for ESPN [sic] until we get this matter cleared up on the exact amount needed to pay[.]” (GC Exhibit 6.) Ms. Biggs-Adams sent Mr. Brown a reply email stating that she was working out of town, but she would head back to the office, and that she needed to look at his file before she could give him a full answer to his previous questions. (GC Exhibit 7.)

Ms. Biggs-Adams testified that when she read Mr. Brown’s email, she did not think of it as a *Beck* objection, because it was not a letter of objection to the Agency Fee Administrator at CWA in Washington, DC as described in the Your Rights brochure. Mr. Brown had asked multiple questions in his email, and it was her intent to review the file and investigate the questions he had asked.

On April 9, 2019, the Union received an Application for membership filled out and signed by Mr. Brown, and a signed authorization form. (Respondent’s Exhibit 5.)

Mr. Brown sent Ms. Biggs-Adams emails to follow up and request response. Mr. Brown’s counsel filed charge 19-CB-244528 on or about July 8, 2019. (GC Exhibit 1a.)

On December 18, 2019, Respondent’s counsel sent a letter to Mr. Brown’s counsel:

Regarding the above-referenced matters, we wanted to make sure that you are aware that several times, the Union provided Charging Party with the procedure for filing an objection at CWA if he chose to do so. Once he was informed of the proper procedure, it was his responsibility to follow it.

(Respondent's Exhibit 6.) After the letter to his counsel, Mr. Brown admits that he still did not file an objection at CWA.

B. ANALYSIS: RESPONDENT DID NOT VIOLATE THE DUTY OF FAIR REPRESENTATION

The ALJ's proposed decision would find a violation due to the Union's failure to notify Brown that he had misdirected what could be construed as an attempted dues objection; however, in the context of the facts of this case, the omission did not constitute arbitrary, discriminatory, or bad-faith conduct in violation of the Act.

The standard for assessing a union's obligations under *Beck* is the duty of fair representation – a union breaches the duty if its actions are arbitrary, discriminatory, or in bad faith. *California Saw & Knife Works*, 32 NLRB 224, 230 (1995) (“*California Saw*”). The Board must balance the statutorily protected interest of the employee with the interest of the union in being able to perform its statutory duties without unreasonable administrative burdens, bringing the “values of reasonableness and practicality into our own considerations of the facts of each case.” *Id.* While a union has the duty to inform individuals of their *Beck* rights before seeking to obligate them to pay dues, “we stress that the union meets that obligation as long as it has taken reasonable steps to insure that all employees whom the union seeks to obligate to pay dues are given notice of their rights.” *Id.* at 233. The union must inform the employee that he has the right to be or remain a nonmember and (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. *Id.*

Here, the Union provided Mr. Brown with the requisite Stage 1 notice in the Your Rights brochure three times – November 10, 2008, when he began working as a daily hire for ABC, Inc.; February 7, 2019, when the Union decided to reach out to individuals who had met the

threshold of days worked but were not paying dues or fees; and April 1, 2019, when the Union was following up with Mr. Brown due to his non-response to the February 7, 2019 letter and enclosures. (Respondent's Exhibit 1, pp. 6-7; Respondent's Exhibit 2, pp. 6-7; and Respondent's Exhibit 4, pp. 5-6.) The Your Rights brochures included all the information necessary for the Stage 1 notice under *California Saw* and *Kroger*.

The Union did not engage in such arbitrary conduct as to breach the duty of fair representation. Instead, Mr. Brown ignored the Union's correspondence until April 2019, and then he raised a number of questions which required research to answer. Although he pasted language that could be construed as a misdirected objection, it was not clear, because it was pasted amid statements that he was willing to pay current dues but not back dues. And Ms. Biggs-Adams did not understand Mr. Brown's correspondence as a misdirected objection, because if he had wanted to file an objection – and pay agency fees, although he had paid neither dues nor fees for years by ignoring the Union's correspondence -- he could have followed the procedure he had been provided – which was a simple letter to CWA. While the busy Union President did not separately repeat the procedure in response to Mr. Brown's emails, in context it was not so egregious as to constitute a breach of the duty of fair representation.

In *California Saw*, the Board did not hold that the duty of fair representation necessarily requires a union to always give individual additional advice to each person who has already been provided with the procedures for filing an objection. In *California Saw*, IAM Local 946 sent some, but not all, bargaining unit members a copy of the IAM dues objector policy, which included how and where objections should be sent at the IAM office. *California Saw, supra*, 320 NLRB at 247. Local 946 sent other bargaining unit members letters that notified them that the IAM had a policy for objections, but did not enclose the policy nor instruct the recipients how and where to send objections. *Id.* When the complainants attempted to file objections with Local 946 instead of sending them to the IAM office, Local 946 did not immediately notify them that their requests had been misdirected. The Board found that Local 946 violated its duty as to

those to whom it did not timely send a copy of the policy; but Local 946 did not violate its duty as to those to whom it had timely sent the policy:

Our holding does not require, however, that the Union abandon all procedures for the orderly administration of its dues-objection program. Once a would be objector is notified in a timely manner that his objection has been misdirected and informed of the proper procedure to perfect his objection, the employee thereafter bears the responsibility to follow the proper procedure. Thus, although we agree with the judge that Local 946's distribution of the notice merely referring to the existence of its *Beck* objection policy does not constitute adequate notice, even if timely received, that objections should be sent to the IAM, we find that **mailing of the policy does constitute adequate notice.** Accordingly, **we find no violation with respect to the Unions' failure to recognize the objector status of employees such as Charles Lewis who had timely received a copy of the IAM's *Beck* policy but did not take steps to follow the procedures.**

California Saw, supra, 320 NLRB at 249 (emphasis supplied). Similarly here, the Union had timely sent Brown the brochure providing the Stage 1 *Beck* information and describing the simple procedure for sending an objection to the CWA address in Washington, DC.

Elsewhere in the *California Saw* decision, the Board addressed a different set of facts, in which a group of Boeing employees jointly sent a letter to District Lodge 751 seeking dues-objector status. The District Lodge informed them the request was misdirected and referred them to the policy set forth in a magazine, but it did not actually provide the policy or instruct them where to send their objection. *Id.* at 251. The Board stated, “The duty of fair representation does not permit a union to set up a scavenger hunt for employees who make it known that they wish to become dues objectors to obtain the procedures.” *Id.* at 252.

In this case, the Union neither sent Mr. Brown on a scavenger hunt, nor failed to timely provide Mr. Brown with the procedures for filing a *Beck* objection. If Mr. Brown were truly interested in paying fair-share fees instead of full dues, all he had to do was read the simple instructions and follow them; but Mr. Brown simply ignored the Union’s correspondence. When Mr. Brown finally did contact the Union, he did not send an objection to CWA using the procedure that had been provided to him. Instead, he prepared an email which was unclear, stating that he was willing to join the Union and pay current dues. He also sent the Union office

a signed membership application and checkoff authorization form. And although Mr. Brown sent the Union President another email stating that his membership application was “under duress [sic],” Mr. Brown did not file an objection even after Respondent’s counsel pointed out to Charging Party’s counsel that the procedure was to send the objection to CWA.

The Union has an interest in expecting would-be objectors to follow the orderly process they are given. The Board expressly recognized in *California Saw* that this legitimate interest should be taken into account in determining whether a union’s conduct has been so arbitrary as to constitute a breach of the duty of representation. Since the Union had provided Mr. Brown with its objection procedure, which was not onerous, the Union should not be held to a standard which would require additional individual separate advice to each person who could follow the process if he wanted to, but who fails to do so or who elects not to do so.

Accordingly, the Union did not breach the duty of fair representation, and the Board should find no violation of the Act.

ARGUMENT IN SUPPORT OF EXCEPTIONS 2 AND 3

If the Board finds that Respondent violated the Act, nevertheless the Board should grant Exception 2 (part 1(b) of the Order, ordering Respondent – Local 51 -- to “cease and desist from” providing to objectors a determination of the amount of reduced dues and fees objectors must pay, independently verified apportionment, and challenge procedure) and 3 (Appendix Notice, paragraph beginning with “WE WILL NOT fail or refuse to otherwise respond to your dues objections by providing you with a good faith determination of the amount of reduced dues and fees objectors must pay...”¹), and modify the Order and Appendix to remove those items. Those procedures are handled by CWA, not Respondent.

¹ The full excepted-to paragraph in the Appendix states: “WE WILL NOT fail or refuse to otherwise respond to your dues objections by providing you with a good faith determination of the amount of reduced dues and fees objectors must pay, a detailed and independently verified apportionment of the expenditures for representational and non-representational activities, notice of the procedure used, an opportunity to challenge the calculation and have it reviewed, and a reduction of your dues and fees to include only the costs of representational activities.”

Respondent's omission was to fail to notify Brown that he misdirected what could be construed as an attempted objection, when Brown sent his communications to the Local Union instead of CWA in Washington, DC. If the Board determines that the omission violated the Act, the other remedies ordered in the proposed decision, apart from section 1(b), would suffice to address that omission -- including, *inter alia*, an order to respond to misdirected objection attempts at section 1(a), and a reimbursement order for Brown at section 2. However, there is no justification for section 1(b) of the Order. CWA processes the Stage 2 *Beck* notices to objectors, calculations of chargeable and non-chargeable amounts, providing the independently verified apportionment, and providing the challenge procedure, and Local 51 is not involved in those steps of the process. See *California Saw, supra*, 320 NLRB at 249, stating that a union is not required to abandon its procedures for the orderly administration of dues objections. If Local 51 responds to misdirected objection attempts as provided under section 1(a) of the Order, those individuals who actually desire objector status would presumably then send their objections to CWA, and there is no reason to think that CWA would not appropriately administer the procedure from there. But to comply with section 1(b) of the proposed Order, Local 51 would have to change its division of labor with CWA for the orderly administration of its dues-objection program. For that reason, section 1(b) of the Order imposes an "unreasonable administrative burden" (see *California Saw* at 230) and should be deleted.

Similarly, the Notice should not misrepresent that Local 51 will provide objectors with the Stage 2 notice information, chargeable calculations and challenge process that are handled by CWA. It would cause confusion and unnecessary administrative difficulty to create that inaccurate expectation. Moreover, the Appendix states that Respondent is ordered to "obey" the Notice, but again, Respondent should not have to change the procedure in which CWA administers those steps of the process. Therefore, the excepted-to paragraph in the Appendix should be deleted.

Dated: February 4, 2021

WEINBERG, ROGER & ROSENFELD
A Professional Corporation



By:

ANNE I. YEN

Attorneys for Respondent, NABET-CWA Local 51

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On February 4, 2021, I served the following documents in the manner described below:

RESPONDENT'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS

- X** BY ELECTRONIC SERVICE By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from larnold@unioncounsel.net to the email addresses set forth above.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 4, 2021 at Emeryville, California.

/s/ Laureen D. Arnold
Laureen D. Arnold

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