The Region submitted this case for advice as to whether the Union violated Section 8(b)(1)(A) of the Act by failing to provide the Charging Party, already a financial core agency fee member, with an audit verification letter when it invoiced for annual representational dues that are paid in two installments, but instead provided the audited information prior to the due date of the second installment. Although the Charging Party is at stage 2 of the Beck objection process because has already objected to paying union dues for nonrepresentational activities and needs to decide whether to challenge the union’s statement of chargeable amounts, the Region noted that the charge arguably implicates the concerns expressed by the General Counsel in GC Memo 19-04. In that memo, the General Counsel addressed a union’s fiduciary requirements at stage I of the Beck objection process where an employee subject to union security requirements must decide whether to object to paying dues for nonrepresentational activities. See California Saw & Knife Works, 320 NLRB 224 (1995) (setting forth the information that a union must provide employees at each stage of the Beck objection process), enforced sub. nom., Machinists v. NLRB, 133 F.3d 1012 (7th Cir. 1998).

Here, the Union’s fiscal year runs from May 1 to April 30. The Union invoices nonmembers for representational dues based on an audit completed each February for the prior fiscal year. Nonmembers pay their dues in two installments owed on May 1 and November 1. Pursuant to the Union’s procedure, the Union completed its audit of the 2018-2019 fiscal year in February 2020. Based on that audit it then invoiced the Charging Party for 2020-2021 annual dues. That invoice stated that the Charging Party’s fees were calculated at 94.97% of total annual dues and the Charging Party proceeded to pay the first installment. Thereafter, the Charging party filed the instant ULP charge notwithstanding the Union’s procedure to send the Charging Party and other Beck objectors a bulk mailing in September that contains their annual Beck notices, audit information, and information about the right to challenge the calculation in an AAA arbitration.

In other words, although the Union completes its audit in February for the prior fiscal year, and it invoices Beck objectors for the current fiscal year based on that audited figure, those objectors receive the audit of representational and non-representational expenses 4-months after the due date for the first installment of dues, and approximately 2-months prior to the due date for the second dues installment. The Union began the bulk September mailing that contains audit information in September 2019 apparently in response to the Board’s Decision and Order in United Nurses and Allied Professionals, 367 NLRB No. 94 (2019).

The 4-month lag between the Charging Party receiving an invoice for dues based on an audit and receiving a copy of the audit does not appear to implicate the concerns expressed in GC Memo 19-04. That memo, as noted, addressed a union’s obligations at Stage I of the Beck objection process, where an employee needs to decide whether to object to paying dues for nonrepresentational expenses. Here, by contrast, the Charging Party is at Stage 2 of the Beck process where has no choice but to pay an agency fee at some percentage rate. Moreover, the memo specifically stated that a union does not need to provide a precise or audited figure in order for the employee to make an informed decision as to whether to become a Beck objector at Stage 1. GC-19-04, at 5. Nor did the memo directly or implicitly suggest that at Stage 2 a union needs to contemporaneously provide audit information when it invoices nonmembers.

In any event, the Union’s procedure provides the Charging Party with the ability to make an informed decision on whether to object to dues. Thus, the Charging Party does not have to make a decision to object until receives the Union’s bulk mailing in September that contains the audit. And significantly, once receiving that information, the Charging Party would have ample time to prepare for any arbitration because an arbitration over the 2020-2021 nonrepresentational expenses would not be held until February 2021, 5-months after the Union provides the most recent audit.

We agree with the Region’s determination that the 4-month lag between the Union’s sending nonmembers an invoice for representational expenses and providing them with the audit is
reasonable and not inconsistent with the Board’s decisions in United Nurses and California Saw & Knife Works. Rather, the Union appears to have adequately complied with the requirements set forth by the Board in California Saw by annually providing nonmembers with the percentage of dues reduction, the basis for the calculation, and the right to challenge its figures. Likewise, by providing nonmembers with the audit, the Union appears to have adequately complied with the Board’s holding in United Nurses. There, the Board required that a union, when providing Beck objectors with the reduced fee amounts and information about its major categories of its expenses, also provide verification from the auditor that the financial information disclosed to them had been audited. The 4-month delay is not contrary to those cases because the Charging Party, having received an invoice based on the Union’s most recent audit, has the right under the Union’s written procedures to challenge disputed amounts in arbitration, and the right to have disputed fees placed in an escrow bearing account pending arbitration. In addition, as noted, the Union’s procedures provide the Charging Party and other nonmembers with ample time to prepare for arbitration.

Moreover, assuming that the Union could violate the Act by failing to contemporaneously provide the audit when invoicing nonmembers, we conclude that under the circumstances present here it would not effectuate the purposes and policies of the Act to issue complaint in this case. Significantly, after the Union received a copy of the charge it promptly provided the Charging Party with the most recent audit. In addition, only the first dues installment is arguably at issue because under the Union’s procedure the Charging Party, as well as any other Beck objectors, will have a copy of the Union’s most recent audit prior to paying the second dues installment. Accordingly, the Charging Party is not denied any substantive right by having the Union inform within a reasonable time frame of the basis for the dues amount, and for to thereafter have the ability to challenge the percentage and receive a reimbursement if wins any challenge. That is particularly true here where, as the Region noted, even if the Union sent audit information contemporaneously or prior to it invoicing nonmembers there is no reasonable possibility of scheduling and deciding a class action arbitration on the issue before the May 1 installment is due.

Notably, prior to paying first installment of 2020-2021 dues, the Charging Party had at disposal both 2019-2020 invoice and the Union’s 2017-2018 fiscal year audit (completed in February 2019 and received by the Charging Party in September 2019). With such information, the Charging Party could easily determine whether there was any substantial change in representational dues and have a reasonable idea as to whether planned to object to 2020-2021 fees once received the most recent audit and had to actually make that decision. Thus, the Region should dismiss the instant charge absent withdrawal.

This email closes the case in Advice as of today. Please feel free to contact us with any questions or concerns. Thank you.