

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

Advice Memorandum

DATE: July 19, 2004

TO : Celeste Mattina, Regional Director
Region 2

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: New York Newspaper Printing
Pressmen Union No. 2 536-2548
(NYP Holdings, Inc.) 536-2581-3307
Case 2-CB-19604 554-1475-0137

This Section 8(b)(3) case was submitted for advice as to whether the Union unlawfully refused to provide the Employer with copies of its Beck¹ notices apprising employees of their right to become "financial core members." We conclude that the Union lawfully refused to provide the requested information because it is not relevant to any aspect of the parties' contractual relationship, but rather is relevant only to the Union's compliance with a statutory obligation it owes to the Employer's bargaining unit employees. Therefore, this charge allegation should be dismissed absent withdrawal.²

FACTS

NYP Holdings, Inc. (the Employer) and New York Newspaper Printing Pressmen Union No. 2 (the Union) have a long-standing collective-bargaining relationship and are parties to a contract that expires by its terms on October 31, 2015. The contract contains a Union security clause that provides as follows:

All employees who are members of the Union on the effective date of this agreement are required to remain members of the Union. Employees not presently members of the Union who come within the coverage of this Agreement, must make application for membership in the Union, and become a member thirty (30) days following the beginning of such

¹ Communications Workers of America v. Beck, 487 U.S. 735 (1988).

² [FOIA Exemption 7(A)]

employment or the effective date of this agreement, whichever is later.

The clause does not expressly provide for discipline or discharge in the event an employee fails to comply with its provisions.

On June 24, 2003,³ the Employer requested that the Union provide it with copies of all "financial core membership" notices sent within the preceding two years to "casuals" who became "juniors,"⁴ and copies of such notices the Union planned to send to casuals slated to become juniors in July. The Employer also requested copies of any and all correspondence the Union had sent to its members in the previous five years in connection with its obligation to inform unit employees of their Beck right to elect financial core status. The Employer renewed its request for this information on October 24, but the Union has refused to provide it.

There is no evidence that the Union has failed to satisfy its Beck obligations, that any employee has failed to abide by the contract's union security provision, or that the Union has requested the Employer to discipline or discharge any employee for this reason. The Employer contends that the requested information is relevant because the contract's union security clause is potentially misleading and can only be lawful if it is clarified by the Union informing employees of their Beck rights.

ACTION

We conclude that the Union is not obligated to provide the Employer with the requested information because it is not relevant to contract administration, but rather is relevant only to the Union's compliance with a statutory obligation it owes to the bargaining unit employees it represents. Therefore, this charge allegation should be dismissed, absent withdrawal.

It is well settled that a union's obligation to furnish information relevant to the bargaining process parallels an employer's obligation to do so.⁵ A party to a collective-

³ All relevant dates are 2003.

⁴ Casuals who work at least 110 shifts in a six-month period qualify to become junior pressmen, and are thus subject to the contract's Union security provision.

⁵ See, e.g., Culinary Workers Union Local 226 (Caesars Palace), 281 NLRB 284, 288 (1986); Detroit Newspaper

bargaining relationship is entitled to information from the other party that is relevant and reasonably necessary to negotiate, administer, or police a collective-bargaining agreement.⁶

Here, we conclude that the Employer's request does not concern information relevant to negotiate, administer, or police a collective-bargaining agreement. The Employer has not even asserted any claim of relevance of this information to enable it to negotiate, administer, or police the agreement. We reject the Employer's assertion that the requested information must be provided because it is necessary to enable the Employer to ascertain whether the Union has clarified the contract's potentially misleading Union security clause. As California Saw⁷ makes clear, the Union's Beck obligations are statutory, not contractual. The Employer is not entitled to enforce a statutory obligation the Union owes to unit employees by way of a Section 8(b)(3) charge challenging the Union's duty to bargain in good faith.

Moreover, the Board has stated that the duty to provide information is coextensive with the statutory duty to bargain concerning mandatory subjects of bargaining.⁸ Beck obligations involve the relationship between a union and the employees it represents, not the relationship between an employer and its employees, which is the proper subject of mandatory bargaining.⁹ On this basis, Advice has found that

Printing & Graphic Communications Union Local 13 (The Oakland Press Co.), 233 NLRB 994, 996 (1977), enfd. 598 F.2d 267 (D.C. Cir. 1979).

⁶ NLRB v. Acme Industrial Co., 385 U.S. 432, 435-436 (1967); Curtiss-Wright Corp. v. NLRB, 347 F.2d 61, 68 (3d Cir. 1965), enfg. 145 NLRB 152 (1963); Oakland Press, 233 NLRB at 996.

⁷ California Saw & Knife Works, 320 NLRB 224, 225 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998), cert. denied 525 U.S. 813 (1998) (holding that a union's Beck obligations are properly assessed under the well-established duty of fair representation it owes to all members of a designated bargaining unit).

⁸ SEIU Local 535 (North Bay Development Disabilities Services, Inc.), 287 NLRB 1223, 1223 n.1 (1987), enfd. 905 F.2d 476 (D.C. Cir. 1990), cert. denied 498 U.S. 1082 (1991).

⁹ Id. at 1226, quoting 1 C. Morris, The Developing Labor Law 858 (3d ed. 1983) ("Mandatory subjects of bargaining concern

unions were not obligated to provide information to employers concerning their Beck policies.¹⁰

This is not to say that a union's satisfaction of its Beck obligations is never relevant to contract administration or to the relationship between an employer and its employees. The Board has held that, when a union requested a discharge pursuant to a union security clause and the employer had sufficient reason to suspect that the union had not fulfilled its fiduciary obligations, the employer had a duty to investigate the circumstances surrounding the request for discharge before honoring it.¹¹ We have applied this principle in authorizing complaint where a union refused to provide information the employer needed to determine whether requests for discharges it reasonably suspected would not comply with Beck were lawful.¹²

relations between the employer and the employees, not between the union and the employees.").

¹⁰ See Newspaper Web Printing Pressmen's Union No. 5 (Plain Dealer Publishing Co.), Case 8-CB-6666, Advice Memorandum dated January 8, 1991, and Teamsters Local 524 (Comet Trailer Corp.), Case 19-CB-6382, Advice Memorandum dated January 31, 1989.

¹¹ See Western Publishing Co., 263 NLRB 1110, 1113 (1982) and cases cited. Cf. R.H. Macy & Co., 266 NLRB 858, 858 n.1, 859 (1983) (employer lawfully discharged employee at union's request since it had no reason to believe request might be unlawful).

¹² See Department Store Employees Union Local 1100, Case 20-CB-8537, Advice Memorandum dated March 13, 1991 (shortly after new contract containing a union security clause was executed, union advised employer that more than 100 employees had failed to comply with their "[u]nion membership obligation" and union requested their immediate suspensions and subsequent terminations within seven days unless employees satisfied their "membership requirements;" employer reasonably suspected that union had failed to comply with Beck obligations and employer was entitled to information necessary and relevant to confirm or disprove its suspicions). See also Plain Dealer, supra (employer not entitled to requested agency fee information because it had asserted only unspecified and speculative future difficulties with employees that might arise from the union's agency fee system where there had been no union request for discharge); Comet Trailer, supra (same).

Here, however, the Employer's asserted need for the requested information is nonspecific, speculative, and premature since the Union has not asked the Employer to discipline or discharge any employee for failing to comply with the contract's Union security provision. Accordingly, the Employer cannot demonstrate at this time that the requested information is relevant for contract administration purposes, and thus the Union has lawfully refused to provide it to the Employer.

For the foregoing reasons, the Region should dismiss the instant charge allegation, absent withdrawal.

B.J.K.