

**Laborers International Union of North America,
Local 265, AFL-CIO and Sherry Schmidt-Hill.**
Case 9-CB-7718

September 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS
BROWNING, FOX, AND HIGGINS

Upon a charge filed by Sherry Schmidt-Hill on September 18, 1990, the General Counsel of the National Labor Relations Board issued an amended complaint on January 17, 1992, against the Respondent, Laborers International Union of North America, Local 265, AFL-CIO (Respondent or Union), alleging that the Respondent engaged in certain unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act. A copy of the complaint and notice of hearing was served on the Respondent. The Respondent filed a timely answer denying the commission of any unfair labor practices.

On March 11, 1992, the Charging Party, the Respondent, and the General Counsel filed a Stipulation of Facts and a Stipulation to Transfer Proceeding to the Board. They agreed that the charge, complaint, amended complaint, answers, and the Stipulation of Facts constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties waived a hearing, the making of findings of fact and conclusions of law, and the issuance of a decision by an administrative law judge. On May 21, 1992, the Deputy Executive Secretary, by direction of the Board, issued an order approving the Stipulation, and transferring the proceeding to the Board. Thereafter, the Respondent and the General Counsel filed briefs, and the Respondent filed a reply brief to the General Counsel's brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

FINDINGS OF FACT

I. JURISDICTION

The Employer, Fred A. Nemann Co., a corporation with a place of business in Cincinnati, Ohio, is engaged as general contractor in the building and construction industry constructing water and sewage pipelines. The Employer, in the 12 months prior to the issuance of the amended complaint, in the course and conduct of its business operations, purchased and received at its Cincinnati, Ohio facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Ohio. We find that Fred A. Nemann Co. is an employer engaged in commerce

within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The issues presented are whether the Respondent violated Section 8(b)(1)(A) of the Act: (1) by failing to notify Charging Party Sherry Schmidt-Hill of her rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988); and (2) by failing to provide the Charging Party, after she had registered a *Beck* objection, with financial information concerning the Respondent's *Beck* calculations.

A. Facts

In April 1990, the Employer voluntarily recognized the Respondent as the bargaining representative of a unit of its laborer employees. The Employer and the Respondent agreed to be bound by a contract negotiated by the Ohio Contractors Association, Labor Relations Division, effective from May 1, 1988, to May 1, 1992. That collective-bargaining agreement contained a union-security provision.

In late May or early June 1990,¹ the Respondent's field representative, Williams, approached Charging Party Schmidt-Hill at a jobsite and requested that she join the Union and sign a dues-checkoff authorization. Schmidt-Hill refused to sign the dues checkoff until she discussed the matter further with the Employer. Schmidt-Hill also questioned Williams about the availability of fringe benefits, including health insurance. Williams told her that these benefits did not commence until she had worked 450 hours, according to an eligibility requirement under the parties' contractual health insurance plan.

About June 8, Schmidt-Hill telephoned Region 9 of the National Labor Relations Board and discussed her situation with an information officer. The information officer informed her about financial core membership status and the Supreme Court's decision in *Beck*. Schmidt-Hill thereafter mailed to the Respondent a certified letter dated June 8, which stated, "I would like . . . the amount for which Financial Core Members pay[] to your union for administrative fees." The Respondent received this letter on June 11.

About June 18, the Charging Party visited the Respondent's office and spoke with its business manager, Richardson, regarding "core membership." She explained that she understood that such an arrangement would require her to pay dues and initiation fees, but in a reduced amount which excluded the sum that was contributed on her behalf to cover her under a health insurance plan, which amount she believed was ap-

¹ All dates are in 1990.

proximately \$3 per hour. Schmidt-Hill explained that she had her own health insurance and accordingly did not wish to participate in the insurance plan provided for in the contract between the Union and the Employer. Schmidt-Hill argued that prior to the Employer's recognition of the Union, the Employer had granted her request for higher wages in lieu of health and welfare coverage, and she demanded that the Respondent continue this arrangement.

Business Manager Richardson explained to Schmidt-Hill that the \$3 per hour amount was not dues but was a payment by the Employer for fringe benefits required by the terms of the parties' collective-bargaining agreement, and that the Union was powerless to waive this contractually required payment by the Employer. Schmidt-Hill remained firm in her view that this amount was a part of her dues and that as a financial core member she was entitled to be refunded this amount. Unable to reach an agreement, Schmidt-Hill suggested that she and Richardson both check further into this issue.

About June or early July, Schmidt-Hill telephoned Business Manager Richardson and again raised the issue of financial core membership status. She no longer insisted, however, that she receive higher wages in lieu of health and welfare coverage. Richardson stated that he recognized Schmidt-Hill's right to be charged only for expenditures related to collective bargaining. He further stated that, in lieu of establishing an accounting system to determine the percentage of the regular dues payment a financial core member would be required to pay, the Respondent had decided that it would not require her to pay any dues or fees whatsoever and that it would not enforce the union-security clause of the collective-bargaining agreement against her. Richardson informed her that even though she would not be required to pay any union dues or fees, the Union would continue to represent her fully as it did the other members of the bargaining unit.

Richardson thereafter instructed the Employer to refund all dues and fees it had withheld from the Charging Party's paycheck. The Employer returned all dues and fees payments to the Charging Party, and agreed that it would no longer deduct such payments from her paycheck. The Charging Party has subsequently not paid any dues or fees to the Respondent.

B. Contentions of the Parties

1. The General Counsel

The General Counsel argues that a union's duty of fair representation and the Supreme Court's decision in *Chicago Teachers Union Local 1 v. Hudson*² require that a union notify nonmember unit employees and employees newly hired into the unit, at least once a

year, of their rights under *Beck*. The General Counsel asserts that such notice is necessary to permit employees to make an informed decision with respect to the exercise of their *Beck* rights. The General Counsel further contends that when a nonmember files a *Beck* objection, a union is obligated to provide the objecting employee with a sufficient explanation of the union's determination of the representational proportion of expenditures it charges objecting nonmembers, in order to enable objectors to decide whether to challenge the union's determination. The General Counsel further asserts that a union is required to have its expenditures verified by an independent auditor. The General Counsel additionally argues that the Respondent's statement that it would not enforce its union-security clause against the Charging Party does not negate its obligation to audit its financial records and to provide that financial information to objectors.

2. The Respondent

The Respondent argues that a union does not have an obligation to notify nonmembers of *Beck* rights unless they have made their dissent under *Beck* known to the union. The Respondent further argues that Board law imposes a notice requirement on unions only when three factors are satisfied: (1) rights arising from a collective-bargaining agreement are at stake; (2) the union has knowledge unavailable to unit employees; and (3) the employee requests the information or it is critical to the employee's ability to gain or retain employment. The Respondent asserts that none of these factors are met in this case. The Respondent accordingly maintains that it had no obligation to notify the Charging Party of *Beck* rights until she had affirmatively dissented under *Beck*. The Respondent further points out that the notice requirements imposed in public sector cases like *Hudson* are premised on constitutional principles and accordingly are inapposite to union-security agreements in the private sector.

The Respondent further emphasizes that it timely excused the Charging Party from all union-security obligations when she did dissent. The Respondent asserts that it accordingly had no obligation to provide her with financial information concerning the Union's breakdown between chargeable and nonchargeable expenditures. Such information is irrelevant, it is argued, when a union excuses a *Beck* objector from all union-security obligations and any inquiry into the appropriateness of the amounts charged to an objector is thereby rendered moot. The Respondent contends that a union may decide, as it did here, that it is in the best interest of all unit employees not to incur the substantial accounting expense involved in apportioning its expenditures between chargeable and nonchargeable when only one employee has filed a *Beck* objection.

² 475 U.S. 292 (1986).

C. Discussion

In *Communications Workers v. Beck*, the Supreme Court held that the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment.³ In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board found that the union violated its duty of fair representation by failing to provide notice of *Beck* rights to nonmember unit employees covered by a union-security agreement.⁴ The Board held that

when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (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.⁵

The Board further held that if a nonmember employee filed a *Beck* objection, the employee must be apprised of the following additional information by the union: the percentage of the reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures.⁶ The purpose for providing objectors with this additional information is to allow an employee to decide whether to mount a challenge to the union's dues reduction calculations.⁷

The Board explained that these notice requirements furnish significant protection to the interests of the individual nonmember unit employee with respect to *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective bargaining. The Board stressed that a union satisfies its notice obligation as long as it has taken reasonable steps to ensure that all employees whom the union seeks to obligate to pay dues under

a union-security clause are given notice of their *Beck* rights.⁸

The parties' Stipulation establishes that at the time the Respondent requested that the Charging Party join the Union and sign a dues-checkoff authorization, and thereby sought to obligate her to pay fees and dues under the union-security clause, the Respondent failed to notify the Charging Party of her *Beck* rights. The Respondent accordingly violated the rule set forth in *California Saw & Knife Works* requiring that *Beck* notice be given to an employee when or before a union seeks to obligate that employee to pay fees and dues under a union-security clause. *Id.*

We cannot find, however, that the Respondent violated the Act by failing to provide the Charging Party with financial information after she had registered a *Beck* objection. As we explained above, the underlying purpose for providing *Beck* objectors with financial information is to allow an objector to decide whether there is any reason to mount a challenge to the union's dues reduction calculations. There can, however, be no dispute regarding the correctness of the fees charged by a union to a *Beck* objector when no payment of fees is required. Absent any dispute regarding the correctness of a union's calculations, a challenge by an objector to those calculations is superfluous. The Union here waived entirely the Charging Party's obligations under the union-security clause and specifically informed her that she would not be required to pay any portion of her union dues or fees. The Union's waiver of the payment of any fees by the Charging Party mooted a challenge by her to the Union's calculations and made unnecessary the provision to her of financial information. As we emphasized in *California Saw*, a union is afforded a wide range of reasonableness in satisfying its duty of fair representation, and we cannot construe the Respondent's conduct here to have been undertaken arbitrarily, discriminatorily, or in bad faith.⁹ We accordingly find in these circumstances that the Respondent did not breach its duty of fair representation by failing to provide the Charging Party with financial information after she had registered a *Beck* objection.

CONCLUSIONS OF LAW

1. Fred A. Nemann Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Laborers International Union of North America, Local 265, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing to notify the Charging Party of her *Beck* rights at the time it sought to obligate her to pay fees and dues under the union-security clause, the Respond-

³ 487 U.S. at 752-754.

⁴ For the reasons stated in fn. 47 of *California Saw*, Chairman Gould finds that it is appropriate here to resolve issues of *Beck* and General Motors notice violations directly under Sec. 8(b)(1)(A)'s prohibition against restraint and coercion rather than under duty of fair representation standards as set forth in *Vaca v. Sipes*, 386 U.S. 171 (1967).

⁵ *California Saw & Knife Works*, supra at 233.

⁶ *Id.*

⁷ Supra at 235.

⁸ *Id.* at 233.

⁹ *California Saw & Knife Works*, supra at 234.

ent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

4. The Respondent has not otherwise violated the Act as alleged in the amended complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to provide notice in writing to Sherry Schmidt-Hill of her *Beck* rights, in accordance with the Board's decision in *California Saw & Knife Works*.

ORDER

The National Labor Relations Board orders that the Respondent, Laborers International Union of North America, Local 265, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify nonmember unit employees, when we first seek to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), 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.

(b) In any like or related manner interfering with, 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) Notify Sherry Schmidt-Hill of her right to be or remain a nonmember; and of the rights of nonmembers under *Communications Workers v. Beck*, *Supra*, 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. In addition, this notice must include sufficient information to enable the employee to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) Post at its business office and meeting hall copies of the attached notice marked "Appendix."¹⁰ Cop-

ies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

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."

APPENDIX

NOTICE TO 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to notify nonmember unit employees, when we first seek to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), 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.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL notify Sherry Schmidt-Hill of her right to be or remain a nonmember; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), 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. In addition, this notice will include sufficient information to enable the employee to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 265, AFL-
CIO

¹⁰If 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