

Automotive, Petroleum and Allied Industries Employees Local 618, affiliated with International Brotherhood of Teamsters, AFL-CIO (Chevron Chemical Company) and Delbert Reed. Case 14-CB-7390

August 24, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HURTGEN

On May 21, 1992, Administrative Law Judge Michael O. Miller issued the attached decision. The General Counsel filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.¹

1. The complaint alleges that the Respondent violated Section 8(b)(1)(A) by charging Charging Party Delbert Reed, a nonmember of the Respondent, for the cost of representing employees in bargaining units other than the Employer Chevron Chemical Company (Chevron) bargaining unit to which Reed belonged. The allegation is that these costs are unrelated to unit collective bargaining, contract administration, or grievance adjustment. See *Communications Workers v. Beck*, 487 U.S. 735 (1988).

The judge recommended dismissal of this allegation. He found that under *Beck*, as a general principle, a union need not account for its representational expenses on a unit-by-unit basis. For reasons set forth in *California Saw & Knife Works*, 320 NLRB 224, 237, 293-294 (1995), *enfd.* 133 F.3d 1012, 1016 (7th Cir. 1998), we agree with the judge that the Respondent was privileged to calculate its *Beck* fee allocation on other than a unit-by-unit basis. We therefore adopt his recommended dismissal of this complaint allegation.²

¹ On April 18, 1994, the General Counsel moved to withdraw his exceptions 1 and 2, excepting to the administrative law judge's failure to find that the Respondent violated Sec. 8(b)(1)(A) of the Act by describing as chargeable in its *Beck* notice expenditures for the organization of employees of competing employers in the industry and by including organizing as a chargeable category in its accounting. The General Counsel has contended that any such expenditures would have been nonchargeable to objectors. We grant the General Counsel's motion to withdraw these exceptions.

² The judge found that, as an exception to the general principle, the Respondent did breach its duty of fair representation by including the cost of nonunit litigation and arbitration expenditures in the fees it charged objectors. No exception was filed to this finding, which we adopt pro forma. We note, however, that in *California Saw*, 320 NLRB at 237-239, *enfd.* 133 F.3d at 1016 (7th Cir. 1998), the Board held that some extra unit litigation expenses are properly chargeable to *Beck* objectors. Member Hurtgen does not pass on the issue of whether a union may charge objectors for extra unit litigation expenses.

2. The complaint also alleges that the Respondent violated Section 8(b)(1)(A) by failing adequately to disclose the basis for its allocation of chargeable and nonchargeable items in the accounting it provided Reed, including its failure to respond to Reed's request for further information after he received the accounting, and failing to reflect that its accounting had been verified by an independent accounting firm.

In *California Saw*, supra, the Board held that, when nonmembers object to a union's use of agency fees paid under a union-security agreement, the union must reduce the fee to reflect representational expenditures only. The union also must apprise the objector of the percentage of fees being reduced, explain the basis for the calculation and the objector's right to challenge it, and provide the objector sufficient information to decide intelligently whether to challenge the union's calculations. Specifically, *California Saw* requires unions to furnish to the objector a breakdown of its calculations by major categories of expenditures, designating which categories it claims are chargeable or nonchargeable to objectors. *Id.* at 239.

The judge found that the Respondent satisfied its disclosure obligations under *Beck*. In response to Reed's letter of resignation, in which he made a *Beck* objection, and the subsequent request for a breakdown of how moneys he had remitted had been spent, the Respondent sent him, inter alia, a financial accounting which designated the expenditures that the Respondent had incurred during the previous calendar year and the percentages of each expenditure that it claimed were chargeable and nonchargeable. *California Saw* requires that the union inform the objector of "the major categories of expenditures" so as "to enable objectors to determine whether to challenge" a union's claim that designated expenditures are chargeable. *Id.* A union need not, at the prechallenge stage, establish full justification for its fee calculation. That burden is created only if and after the employee files a challenge to that figure. *Teamsters Local 443 Connecticut Limousine Service*, 324 NLRB 633, 634 (1997). The accounting that the Respondent furnished Reed comports with the standard of *California Saw & Knife*. We, therefore, adopt the judge's finding that the Respondent's information was adequate and his recommended dismissal of this allegation.³

³ In view of our finding that the Union's disclosure of information is adequate under *California Saw*, we also adopt the judge's related finding that the Respondent did not restrain or coerce Reed by failing to reply to a second written request for information, which Reed lodged after he received his accounting. The judge found that this followup letter requested "minutely detailed information," ranging from a breakdown of auto expenses to "charges for stewards meetings," so as to establish "who pays for beer consumed at [those] meetings." We find that the accounting Reed received, designating and classifying as chargeable or nonchargeable all expenditures incurred during the relevant period was sufficient to meet the Respondent's obligation under *California Saw* to disclose "major categories" of expenditures. 320

We also adopt the judge's finding that the Respondent did not violate Section 8(b)(1)(A) by failing to have the information, which it provided to Reed, reflect the fact that it had been verified by an independent auditor. *Id.* The complaint allegation regarding verification is a narrow one. There is no issue as to the adequacy of the Respondent's accounting procedures. Indeed, verification was performed by an independent auditor.⁴ The General Counsel argues that this fact was not shown on the face of the accounting document itself. However, contemporaneously with the accounting he was furnished, Reed did receive a notice from the Union addressing the rights and obligations of financial core members. In that letter, Reed was informed that the *Beck* accounting (which the Respondent had sent him) was "an independent accountant's report." We find, therefore, that the record as a whole does not support the General Counsel's contention that the Union failed to inform Reed that its accounting had been verified by an independent accountant. Accordingly, we adopt the judge's recommended dismissal of this allegation.

3. The complaint also alleges that the Respondent violated Section 8(b)(1)(A) by offsetting interest and dividend income it received during the relevant period against nonchargeable expenditures prior to determining the respective percentages of chargeable and nonchargeable expenditures. The General Counsel contends that the Respondent has used this offset to overstate the chargeable percentage that it has assessed objectors. The judge dismissed the allegation, stating that, because the income at issue was derived from assets belonging to the Union (i.e., the members), the Respondent had no obligation to share the benefit of these assets with Reed, a nonmember, in formulating its chargeability allocation. Accordingly, the judge found that the offset did not breach the Respondent's duty of fair representation and recommended dismissal of this complaint allegation. We reverse.

Our difference with the judge is essentially a factual one. The judge stated that the interest and dividend income represented "assets belonging to the Union (i.e., its members.)" However, there is no evidence in the record to support a finding that the interest and dividend income was generated solely from funds (or assets purchased with funds) other than dues and fees for representational services exacted equally from all unit employees, includ-

ing objectors, pursuant to the union-security clause.⁵ In the absence of such a showing, we are unable to conclude that the methodology used by the Respondent to calculate the fees charged to objectors was reasonably designed to ensure that objectors were required to pay only their "fair share" of the Union's representational expenses, and that no portion of the fees they were charged would be expended for nonrepresentational activities. Accordingly, we find that the Respondent violated Section 8(b)(1)(A).⁶

ORDER

The National Labor Relations Board orders that the Respondent, Automotive, Petroleum and Allied Industries Employees Local 618, affiliated with International Brotherhood of Teamsters, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Including the costs of nonunit arbitrations and litigation in those expenditures charged to objecting financial core members.

(b) Calculating dues and fees charged to objecting financial core members in a manner not reasonably designed to ensure that no portion of their fees and dues are expended for nonrepresentational purposes.

(c) In any like or related manner 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) Recalculate the percentage ratios between chargeable and nonchargeable expenditures, after (i) excluding from the chargeable category the costs of nonunit arbitrations and litigation and (ii) excluding the offset for non-dues interest and dividend income; and pay to Delbert Reed the difference between the fees he paid under the allocation used by the Union and the allocation as recalculated.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount of

NLRB at 239, citing, *inter alia*, *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 307 fn. 18 (1986); *Dashiell v. Montgomery County*, 925 F.2d 750, 756 (4th Cir. 1991). See also *Connecticut Limousine*, supra at 633-634.

⁴ Hence, this case is not affected by the D.C. Circuit's decision in *Ferriso v. NLRB*, 125 F.3d 865 (1997), which held, contrary to the Board's decision in *California Saw*, that *Beck* dues calculations must be verified by an independent auditor. Compare *Machinists v. NLRB*, 133 F.3d 1012, 1016-1018 (7th Cir. 1998), *enfg. California Saw & Knife*, 320 NLRB 224 (1995), which upheld the Board's holding on this issue.

⁵ The Respondent Union is the party that has the relevant evidence and thus has the burden of going forward with any such evidence.

⁶ The Supreme Court has not specified any particular methodology that a union must use to calculate the fees it charged to objectors, and we decline to do so here. Although the issue of methodology was not specifically before the Court, we note that the Court, in non-NLRA contexts, has indicated as acceptable a method whereby the union divides its expenditures for nonrepresentational purposes by its total expenditures, and reduces objectors' dues and fees by the resulting percentage. See *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963); *Abood v. Detroit Board of Education*, 431 U.S. 209, 239-2340 (1977). However, the Court indicated in *Allen* that other methodologies might also be acceptable. 373 U.S. at 2132 fn. 8 and appendix. Since these issues have not been litigated or briefed, we do not rule upon what methodologies would be lawful in lieu of the "offset" method found unlawful herein. For the same reason, we do not pass upon the legality of the methodology endorsed by our concurring colleague.

rebated fees to which Reed is entitled under the terms of this Order.

(c) Within 14 days after service by the Region, post at its union office in St. Louis, Missouri, copies of the attached notice marked “Appendix.”⁷ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification attesting to the steps that the Respondent has taken to comply.

CHAIRMAN GOULD, concurring.

I agree with the result reached by my colleagues but I write separately with respect to the interest and dividend offset issue discussed in section 3 of the decision. As my colleagues state in footnote 6, the Supreme Court has not specified a methodology that unions must use to calculate *Beck*¹ dues reductions. Any method is acceptable if it does not result in the shifting of the cost of nonrepresentational expenditures to objecting employees. My colleagues note that the Court has arguably approved a method whereby the union divides its expenditures for nonrepresentational purposes by its total expenditures and reduces objectors’ dues and fees by the resulting expenditures. I write separately to set forth an alternative method which would also reach the desired result of not charging objectors for nonrepresentational expenditures. This method is essentially the method that the Court suggested as appropriate in *Machinists v. Street*, 367 U.S. 740 (1961).

As stated in *Beck*, and applied in our seminal decision in *California Saw & Knife Works*, 320 NLRB 224 (1995), nonmember employees of a bargaining unit who object to the use of their dues under a contractual union-security clause may not be charged for activities that are unrelated to the union’s role as a collective-bargaining representative. Applying this standard in *Street*, the Court defined political activity as an expense for which objectors were unlawfully charged, and as a remedy suggested a “restitution” formula that would refund to the objector the:

portion of his money . . . in the same proportion that the expenditures for political purposes bore . . . to the total union budget.

⁷ If 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 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.”

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

Street, supra, 367 U.S. at 775.² As interpreted by Justice Whittaker in his concurring opinion, this formula requires “‘restitution’ to the objector of that part of his dues that is equal to the ratio of dues spent for ‘proscribed activity’ to total dues collected by the union.” *Id.* at 780.

I would express this formula in the converse, that is, an objector is required to pay that portion of the dues that is equal to the ratio of dues spent for chargeable representational purposes to total dues collected. In mathematical terms, this “*Street*” formula is expressed as:

$$\frac{\text{chargeable expenses}}{\text{total dues income}} = \text{percent of dues owed by the objector}$$

As the Court explained in *Street*, the purpose behind an accurate calculation formula is to ensure that a union does not use payments from nonmember objectors solely for representational activities, thus freeing up payments by members to be used for nonrepresentational activities, and thereby “shift[ing] a disproportionate share of the costs of collective bargaining to the dissenter and hav[ing] the same effect of applying his money to support such political activities.” In my view, the *Street* formula achieves this purpose. The union simply must show what its total dues were for a particular reporting period (the denominator), and how much of that money was spent on chargeable items (the numerator). If the total amount of dues exceeds the amount of chargeable items, then the *Beck* objectors’ dues are reduced by the percentage difference between those two amounts. If the total amount of dues equals or is less than the amount of chargeable items, then the objector must pay the same amount of dues as paid by union members.³

² The same formula, in the form of injunctive relief, was alternatively suggested by the Court.

³ For an example of this applied formula, see *Tierney v. City of Toledo*, 917 F.2d 927, 938 (6th Cir. 1990). See also the following example posed by Justice Whittaker in his partial dissent in *Street*. Justice Whittaker stated (367 U.S. at 779–780):

When many members pay the same amount of monthly dues into the treasury of the union which dispenses the fund for what are, under the Court’s opinion, both permitted and proscribed activities, how can it be told whose dues paid for what? Let us suppose a union with two members, each paying monthly dues of three dollars, and that one does but the other does not object to his dues being expended for “proscribed activity” whatever that phrase may mean. Of the dues for a given month, the union expends four dollars for admittedly proper activity and two dollars for “proscribed activity,” answering to the objector that the two dollars spent for “proscribed activity” were not from his, but from the other’s, dues. Would not the result be that the objector was thus required to pay not his one-half but three-fourths of the union’s legitimate expenses? Or, has not the objector nevertheless paid a ratable part of the cost of the “proscribed activity”?

Under the *Street* formula, the amount spent on “admittedly proper activity” (\$4) is divided by the total amount of dues (\$6) for a percentage of 66.6 percent. The objector is obligated to pay 66.67 percent of the dues (\$3) charged to union members or \$2 (.6667 x \$3=\$2). Thus,

I concede, as my colleagues point out, that the Court in *Railway Clerks v. Allen*,⁴ also suggested a formula based upon the proportion of total nonchargeable expenditures to total union expenditures. Unions are free to use this formula if a lawful result is achieved. In my view, however, the *Street* formula, as shown above, appears to be preferable to the *Allen* formula both in ease of application and its certainty in yielding an accurate and lawful dues amount that an objector must pay. I will, nevertheless, accept any formula which does not result in objectors paying for nonrepresentational activities.

APPENDIX
NOTICE TO MEMBERS
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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT charge objecting financial core members for any portion of our expenditures for arbitrations or litigation which does not involve the unit in which they are employed.

WE WILL NOT offset nonchargeable expenditures against nondues interest and dividend income on our accounting before computing the percentage of expenditures chargeable to objecting financial core members.

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

the objector is required to pay only "his one-half . . . of the union's legitimate expenses" as Justice Whittaker posits that he should.

See also *Retail Clerks v. Schermerhorn*, 373 U.S. 746, 754 (1963), where the Court stated:

Unions "rather typically" use their membership dues "to do those things which the members authorize the union to do in their interest and on their behalf." If the union's total budget is divided between collective bargaining and institutional expenses and if nonmember payments, equal to those of a member, go entirely for collective bargaining costs, the nonmember will pay more of these expenses than his pro rata share. The member will pay less and to that extent a portion of his fees and dues is available to pay institutional expenses. The union's budget is balanced. By paying a larger share of collective bargaining costs the nonmember subsidizes the union's institutional activities.

The *Street* formula prevents a union from requiring nonmembers to "subsidize[] the union's institutional activities."

⁴ 373 U.S. 113, 122 (1963).

WE WILL make Delbert Reed whole for the portion of the fees he paid which pertain to arbitration or litigation outside of the collective-bargaining unit in which he was employed at the Chevron Chemical Company.

WE WILL make Delbert Reed whole for the difference in the fees he paid under the allocation of nondues interest and dividend income used by the Union to compute those fees and the allocation as recalculated.

AUTOMOTIVE, PETROLEUM AND ALLIED
INDUSTRIES EMPLOYEES LOCAL 618,
AFFILIATED WITH INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, AFL-CIO

Frenchette C. Potter, Esq., for the General Counsel.

Clyde E. Craig, Esq. (Craig & Craig, P.C.), for the Respondent.

Delbert Reed, pro se.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in St. Louis, Missouri, on January 29, 1992, based on an unfair labor practice charge filed on May 2, 1990, by Delbert Reed, an individual, and a complaint issued by the Regional Director for Region 14 of the National Labor Relations Board (the Board), on July 19, 1990, as thereafter amended.

The complaint alleges that Automotive, Petroleum and Allied Industries Employees Local 618, affiliated with International Brotherhood of Teamsters, AFL-CIO (Respondent or the Union), in assessing a dues equivalency fee on Reed, a "financial-core member," violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) in several respects. Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS PRELIMINARY CONCLUSIONS OF LAW

Chevron Chemical Company (the Employer), a Missouri corporation, is engaged in the manufacture, sale, and distribution of pesticides, herbicides, and related products at its facility in Maryland Heights, Missouri. In the course and conduct of its business operations during the 12-month period ending April, 1990, the Employer sold and shipped from that plant, products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Missouri. The Respondent admits and I find and conclude that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The facts are uncontradicted and simply stated: The Union represents about 50 employees in approximately 600 individual collective-bargaining units in the St. Louis, Missouri area. Some of these units have as few as two or three employees.

Delbert Reed has been employed by Chevron Chemical Company for about 6 years. The unit in which he works, consisting of about 1 employees, is one of the larger units represented by the Respondent.

The Respondent's collective-bargaining agreement with Chevron, in effect from May 1, 1989, to May 15, 1991, contained a union-security agreement requiring all employees to become and remain members of the Union on and after May 31 of their employment. It further provided that "the Company will discharge any such employee who fails to remain a member thereof for failure to tender periodic dues or initiation fees uniformly required as a condition of employment."¹

In August 1989, Reed withdrew from union membership in expectation of taking other employment. He did not resume paying his dues when that other job fell through. The Union was seeking his termination for failure to pay dues when, in December of that year, he submitted the following resignation letter:

I am paying back dues under protest. I am willing to become a financial core member. I do not wish to be a full union member nor do I wish my funds to be used for any purpose other than collective bargaining.

Reed subsequently requested a breakdown of how the dues money was spent. He was told that the dues income did not cover the Local's expenses and, on March 14, 1990,² was sent a letter which stated that the percentage of dues for financial core members was 99.81 percent. That percentage, he was told, would apply to his dues obligations retroactively from December 1989.

On March 28, Reed received a notice from the Union which set out his rights as a financial core member and the Union's policy with respect to their financial obligations. In relevant part, it stated:

Both the National Labor Relations Act and the Railway Labor Act provide that although employees represented by a union . . . are not required to become members of the union, they may be required to pay their fair share of the costs of operating the union, if the employees are covered by a valid union shop, agency shop, or maintenance of membership contract. This fair share is based upon the union's expenditures in perform-

¹ The union-security language paralleled the language of Sec. 8(a)(3) which precludes the discharge of an employee for nonmembership if the employer "has reasonable grounds for believing that membership was denied for reasons other than the failure . . . to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." It implicitly recognized that, under longstanding Board and court law, the only level of membership which could be required was limited to membership at its "financial core." *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963); *Union Starch & Refining Co.*, 87 NLRB 779 (1949), *enfd.* 186 F.2d 1008 (7th Cir. 1951). The succeeding agreement between Respondent and the Employer contains neither a union-security clause nor one requiring maintenance of membership.

² All dates hereinafter are 1990 unless otherwise specified.

ing the duties "of an exclusive representative of the employees in dealing with the employer on labor management issues." The Union policy in complying with the law follows:

3. The financial core fee payable by objectors will be based on the Union's expenditures for those activities or projects normally or reasonably undertaken by the Union to advance the employment-related interests of the employees it represents. They will be referred to as "chargeable" expenses. The balance of the expenditures are "non-chargeable."

4. Among the "chargeable" expenditures are those for negotiations with employers; enforcing collective bargaining agreements; handling employees' work-related problems through the grievance procedure, before administrative agencies, or at informal meetings; organizing employees of competing employers in the industry; union governance and administration; litigation related to any of the above, and the cost of economic activities in support of chargeable expenditures. Among the expenditures treated as "nonchargeable," which objectors will not be required to support, are those for community service, cost of affiliation with non-related organizations, and support of political candidates. In calendar year 1988, a minimum of 87.83% of the International Union's expenditures were made for chargeable activities. Last year, approximately 99.81% of the Local Union's expenditures were made for "chargeable" activities. The sum of \$.05 will therefore be rebatable from the Local Union.

5. Objectors who disagree with the figures will be given, on written request made within days of receipt of this notice, a full explanation of the basis of the reduced fee charged to them. That explanation will include a more detailed list of the categories of expenditures deemed to be "chargeable" and those deemed to be "nonchargeable," and will also include the independent accountant's report showing the Union's expenditures on which the reduced fee is based.

At the same time, Reed received the accounting referred to in paragraph 5, above. That accounting reflected that the Union had incurred no organizational expenses in 1988. The expenses for auto, out-of-work benefits, salaries for negotiations and pickets, steward meetings, arbitrators, delegate travel, legal expenses, office salaries, professional fees, and payroll taxes were all listed and treated as fully chargeable.

The accounting also reflected that 100 percent of the "general membership benefits" (i.e., those things pertaining only to members, like flowers on a bereavement), approximately 13 percent of the affiliation expenses and 1 percent of other listed expenses (officers, representatives and assistant's salaries and expense allowances, payroll taxes, insurance, office and hall rent, postage, telephone and telegraph, and depreciation) were treated as nonchargeable.

The accounting had been prepared by Joseph Filla, a certified public accountant. He explained that the office salaries and automobile expenses were components of the administration of the local and therefore fully chargeable. He had determined that only 1 percent of the salaries and related expenses were non-chargeable based on interviews with the Union's staff. No time and motion studies were done.

According to the accounting, the Union had received interest and dividend income of approximately \$54,000. All of that had

been applied to nonchargeable items. Filla explained that this was done, appropriately he believed, because the income had been derived from assets belonging to the members. Nonmembers were not entitled to the benefits so derived.

Included in the breakdown was \$21,224 in legal fees and expenses. Of this, \$8700 was the law firm's retainer; the remainder was for particular legal services rendered to the Union, including litigation. There were no litigation expenses or other legal services which had involved the Chevron unit. Neither were there any arbitrations in that unit.

After he received a legible copy of this breakdown, Reed made a written request for minutely detailed information. Included in his request were such items as:

2. A breakdown of auto expenses detailing all such expenses that are chargeable.
3. A breakdown of officer & business reps. & assistants' exp. allowance.
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6. Charges for stewards' meetings & expenses. The stewards are not paid a salary and therefore I desire a breakdown of these expenses specifically to inquire as to who pays for beer consumed at such meetings.

He also asked for such things as the names of all employees and the issues involved in all arbitrations, details on insurance, details of all legal expenses, an explanation of how all rented space was used, a breakdown of all office printing, postage, telephone, and general expenses. He also objected to the inclusion of depreciation. Reed received no response to this letter.

One business agent is primarily responsible for the Chevron unit. On occasion, he may be assisted by any of up to eight others. Chevron is but 1 of 38 or 39 units which this agent services.

B. Analysis

The obligations of a collective-bargaining representative toward those, like Reed, who opt for financial core membership, and the financial obligations of such members to their representative, are determined under *Communications Workers v. Beck*, 487 U.S. 735 (1988). In *Beck*, the Court defined the issue as whether, under Section 8(a)(3), the "financial core includes the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance administration." 487 U.S. at 745. A majority of the justices³ held that it does not.

In reaching this conclusion, the Court looked back to its decision in *Machinists v. Street*, 367 U.S. 740 (1961). Therein, the language of section 2, Eleventh of the Railway Labor Act⁴ (RLA), was examined to determine whether that language, which is substantially identical to the language of Section 8(a)(3) of the NLRA, precluded the expenditure of agency fees on political causes, over the objections of nonmembers. The *Street* Court concluded that it did.

The majority of the Court held that *Street* and its progeny provided controlling precedent for its *Beck* decision. In so holding, it noted that both RLA Section 2, Eleventh and NLRA Section 8(a)(3) had been held to be "statutory equivalents . . . because their nearly identical language reflects the fact that in

both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost." *Beck*, 487 U.S. at 746, quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 452 fn. 13 (1984). The elimination of "free-riders," i.e., those who enjoy the benefits of union representation without sharing in the cost thereof, was, in the Court's view, the overriding legislative justification for authorizing union-security agreements. Thus, the Court stated (*Beck*, 487 U.S. at 751-752):

In *Street* we concluded that "§ 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes," but that Congress did not "intend to provide the unions with a means of forcing employees, over their objection, to support political causes which they oppose." 367 U.S. at 764, 81 S.Ct. at 798 . . . We have since reaffirmed that "Congress' essential justification for authorizing the union shop" limits the expenditures that may properly be charged to nonmembers under § 2, Eleventh to those "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Ellis v. Railway Clerks*, 466 U.S. at 447-448, 104 S.Ct. at 1892. *Given the parallel purpose, structure, and language of § 8(a)(3), we must interpret that provision in the same manner.* [Emphasis added.]

Thus, the *Beck* Court clearly stated that Section 8(a)(3), like section 2, Eleventh, "authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" *Beck*, 487 U.S. at 762-763, quoting *Ellis*, 466 U.S. at 448. Those are only such fees and dues as are "germane to representational activities," those which finance and defray the costs of collective bargaining, and are "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Beck*, 487 U.S. at 752, 759, and 763.⁵ See also *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507, 1957 (1991).

What expenses, then, may a union charge one who chooses to be a financial core member and what information must it provide such individuals? Inasmuch as the Court, in *Beck*, held Section 8(a)(3) and section 2, Eleventh to be identically in-

⁵ Justice Blackmun concurred in part and dissented in part, joined by Justices O'Connor and Scalia. The dissent rejected the majority's reliance upon *Street*. It looked instead to the unambiguous language of Sec. 8(a)(3) as its guiding principle of statutory construction and to the Board's reasonable construction of the statute. It found the majority's limitation of chargeable fees to those germane to collective bargaining, contract administration, and grievance adjustment unwarranted by the plain language of Sec. 8(a)(3). It would have held that under Sec. 8(a)(3), unions are entitled to collect those "periodic dues and initiation fees uniformly required of all members, not a portion of full dues." *Beck*, 487 U.S. at 771. The dissent also distinguished the congressional intent underlying Sec. 2, Eleventh and Sec. 8(a)(3). It noted that the latter was intended to "remedy the most serious abuses of compulsory union membership," the closed shop and the union-shop agreement which effectively acted as a closed shop through the arbitrary or discriminatory denial of union membership coupled with a demand for discharge of nonmembers. The purpose of Sec. 2, Eleventh, to eliminate the abuses of "free-riders" in a system which provided for voluntary unionism, was more limited. The dissenting justices would not have found the two statutes to have been comparably intended nor the Court's earlier interpretation of Sec. 2, Eleventh in *Street* to be controlling in *Beck*.

³ Justice Brennan delivered the opinion, in which the chief justice and Justices White, Marshall, and Stevens joined. Justice Kennedy took no part in the consideration or decision of the case.

⁴ 64 Stat. 1238, 45 U.S.C. § 152, Eleventh.

tended by Congress, and its decision in *Street* to be controlling, one must look to the *Street* decision and its progeny for guidance.

The only union expenditures at issue in *Street* were those for political causes opposed by the unwilling agency-fee payer. The Court concluded that section 2, Eleventh had been adopted as a limitation upon the voluntary unionism which characterized the RLA. Its adoption was in response to concerns about “free riders,” those who received the benefits of the unions’ representation on their behalf without bearing their fair share of the costs. It held, 367 U.S. at 763–764:

The conclusion to which this history clearly points is that § 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective bargaining agreements, and the cost of the adjustment and settlement of disputes. [Footnote omitted.] One looks in vain for any suggestion that Congress also meant in § 2, Eleventh to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.

The Court went on to note the limited nature of the issue before it and stated, 367 U.S. at 768–769:

[The use of the objector’s money] to support candidates for public office, and advance political programs, is not a use which helps defray the expenses of the negotiation or administration of collective agreements, or the expenses entailed in the adjustment of grievances and disputes. In other words, it is a use which falls clearly outside the reasons advanced by the unions and accepted by Congress why authority to make union-shop agreements was justified. On the other hand, it is equally clear that it is a use to support activities within the area of dissenters’ interests which Congress enacted the proviso to protect. We give § 2, Eleventh the construction which achieves both congressional purposes when we hold, as we do, that § 2, Eleventh is to be construed to deny the unions, over an employee’s objection, the power to use his exacted funds to support political causes which he opposes. [Footnote omitted.]

The Court in *Street* expressed no view as to other objected-to union expenditures. It proposed various remedies and remanded the case for further proceedings.

The same question, that of expenditures to support political causes, was posed, and the same result reached, in *Railway Clerks v. Allen*, 373 U.S. 113 (1963). In that case, the Court placed the burden of calculating and proving the proportion of political to total union expenditures upon the unions, which possessed the necessary facts and records. It emphasized, 373 U.S. at 122:

Absolute precision in the calculation of such proportion is not, of course, to be expected or required; we are mindful of the difficult accounting problems that may arise. And no decree would be proper which appeared likely to infringe upon the unions’ right to expend uniform exactions under the union-shop agreement in support of activities germane to collective bargaining and, as well, to expend nondissenters’ such exactions in support of political activities.

Finally, the Court in *Allen* went on to suggest a practical decree which would avoid extensive litigation.

Similarly, in *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977), the Court upheld the validity of an agency shop clause applicable to governmental employees “insofar as the service charge is used to finance expenditures by the Union for the purposes of collective bargaining, contract administration, and grievance adjustment . . .” 431 U.S. at 2. The constitution, it held, barred the union from collecting sums from dissenting employees for the support of ideological causes not germane to its duties as collective-bargaining representative. The Court cited as controlling, *Railway Employee’s Department v. Hanson*, 351 U.S. 2 (1956), which had upheld the validity of section 2, Eleventh, and *Street*. It did not otherwise define the line between chargeable and nonchargeable expenditures.

The language of the *Aboud* Court, with respect to the union’s obligations, is worthy of note, 431 U.S. at 221–222:

The designation of a union as exclusive representative carries with it great responsibilities. The task of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. . . . The services of lawyers, expert negotiators, economists, and a research staff, as well as general administrative personnel, may be required. Moreover, in carrying out these duties, the union is obliged “fairly and equitably to represent all employees . . . , union and non-union” within the relevant unit [citing *Emporium Capwell Co. v. Western Addition Community Org.*, 420 U.S. 50, at 761]. A union-shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become “free-riders” to refuse to contribute to the union while obtaining benefits that necessarily accrue to all employees. [Citations and footnotes omitted.]

There is no question of expenditures in support of political candidates or causes in the instant case. The Union made no political contributions in 1988 and expressly acknowledged that such expenditures were not chargeable to objecting financial core members.

The first case to reach the Supreme Court questioning the chargeability of other types of expenditures under section 2, Eleventh was *Ellis v. Railway Clerks*, 466 U.S. 435 (1984). Therein, the Court stated at 448:

Hence, when employees . . . object to being burdened with particular union expenditures, the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Under this standard, objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective-bargaining contract and settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit.

Specifically, the Court found that the expense of union conventions were chargeable. It found that, in order to perform its statutory functions, the union was required to maintain its corporate or associational existence, to elect officers to carry out

and manage its affairs, and consult with its members on goals and policies. It also upheld de minimus expenditures for social activities and expenditures for union publications to the extent that they are not devoted to political causes.

In the instant case, the chargeable expenditures included legal fees over and above the annual retainer, all of which, in 1989, had paid for advice and litigation on behalf of other bargaining units. They also included the costs of arbitrations in other units. *Ellis* would appear to hold nonunit litigation and arbitration expenditures to be nonchargeable under the RLA. The Court stated, 466 U.S. at 455:

The expenses of litigation incident to negotiating and administering the contract or settling grievances and disputes arising in the bargaining unit are clearly chargeable to petitioners as a normal incident of the duties of the exclusive representative. The same is true of fair representation litigation arising within the unit, of jurisdictional disputes with other unions, and of any other litigation before agencies or in the courts that concerns bargaining unit employees and is normally conducted by the exclusive representative. The expenses of litigation not having such a connection with the bargaining unit are not to be charged to objecting employees.

See also *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991), involving the constitutionality of a state law permitting union and agency shops in agreements covering units of public employees.⁶ Therein, the Court, citing *Ellis*, found that the First Amendment barred the passing-on of extra-unit litigation expenses, which it found akin to political activity and “not germane to the union’s duties as exclusive bargaining representative.”

Respondent did not incur any expenses for organizational activities in 1988. Perforce, none of the fees paid by Reed went to such activities. However, the Union’s notice to nonmembers, and the accounting prepared by its certified public accountant, included respectively, as potentially chargeable expenditures, “organizing employees of competing employers in the industry” and “Organizing.” The General Counsel argues, in brief, that by the mere inclusion of the reference to organizational expenses, the Union violated Section 8(b)(1)(A). The brief contains no discussion as to how or why the inclusion of those categories restrains and coerces employees (the operative words of Section 8(b)(1)(A)) when no such expenses were actually charged to the dissenting employee.

The Court, in *Ellis*, treated with organization expenses. It found that the use of dues moneys “exactd from objecting employees to recruit members outside the bargaining unit can afford only the most attenuated benefit to collective bargaining on behalf of dues payers.” 466 U.S. at 452–453. Accordingly, it held them to be nonchargeable. However, the organizational expenses considered therein were not limited to those expended on organizing employees of competing employers in the same industry, as Respondent had limited its potentially chargeable organizational expenses in its notice.

⁶ As it had in *Abood*, the Court in *Lehnert* found that cases of statutory construction, such as *Street* and *Allen*, provided guidance for resolving constitutional challenges to the enforcement of state-authorized union-security agreements covering public employees. The reverse is also generally true; cases decided under the constitution, although based on higher standards, provide some guidance for those to be decided on statutory grounds.

Whether organizational expenses, generally, are chargeable under Section 8(a)(3), as distinguished from section 2, Eleventh, given the differences in the nature of collective-bargaining units under the NLRA and the RLA, discussed *infra*, and whether organizational expenses which are limited to competing employers in the industry, as Respondent has limited them, are chargeable, are open and legitimate questions. For the Union to assert a position that it is entitled to charge fee-payers for such expenses is not conduct which rises to the level of a threat, violative of Section 8(b)(1)(A). I leave to the Board’s proposed rulemaking procedures the resolution of whether the Union’s limitations on the chargeability of organizing expenses to those incurred in organizing the employees of competing employees in the industry makes the connection between these expenditures and the interests of unit employees less attenuated and more germane than the generalized organizing expenses discussed in *Ellis*.⁷

Reed was not charged for any organizing activity. In light of that, noting, too, that the Union no longer has a union-security agreement in Reed’s unit, and in the absence of any explanation as to why or how Reed was restrained or coerced by the Union’s statements of what it might do under other circumstances, I shall recommend dismissal of the General Counsel’s allegation with respect to organizational expenses.

It appears from the amended complaint (par. 7(b)(5)) and the General Counsel’s brief, that the General Counsel contends that only those expenses directly attributable the Chevron unit were properly charged to Reed. While certain language in *Ellis* and earlier cases seem to point in that direction, the Court in *Lehnert* clearly rejected so burdensome an approach. There, the Court stated, 500 U.S. 519:

as to nonpolitical expenses, petitioners assert that the local union may not utilize dissenters’ fees for activities that, although closely related to collective bargaining generally, are not undertaken directly on behalf of the bargaining unit to which the objecting employees belong. We . . . find [this proposition] to be foreclosed by our prior decisions.

At 500 U.S. 522–523, the Court continued:

Petitioner’s contention that they may be charged only for those collective-bargaining activities undertaken directly on behalf of their unit presents a closer question. While we consistently have looked to whether non-ideological expenses are “germane to collective bargaining,” [*Railway Employees v.*] *Hanson*, 351 U.S. at 235, we have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenters’ bargaining unit.

We think that to require so close a connection would be to ignore the unified-membership structure under which many unions, including those here, operate.

Under the RLA, collective-bargaining units are based on employee classes and crafts and are generally employer or system wide. RLA, section 2, Ninth and Eleventh. See, for example, *Street*, *supra*; *Ellis*, *supra*, (unit consisting of all of Western

⁷ To the extent that the Board has indicated an interest in the views of its administrative law judges by directing that cases pending before us be decided while it proceeds with rulemaking, I would find that that connection is, indeed, less attenuated and more germane. I would, for the reasons set forth, *infra*, find such expenses properly charged to objecting agency-fee payers.

Airlines clerical employees); *Crawford v. Air Line Pilots Assn.*, 870 F.2d 155 (4th Cir. 1989) (industrywide bargaining by a unitary national labor organization). The unions which represent those employees are similarly organized along the same lines. Each unit would, therefore, tend to have substantial numbers of employees sharing the costs of representation. As the instant case illustrates, however, units under the NLRA frequently encompass only a few employees with a single consolidated local union representing many such units.

Limiting the chargeability of otherwise chargeable expenses to those incurred in the objecting employee's unit, in NLRA cases, could work a gross and unwarranted hardship upon local unions which, like the Respondent, represent employees in many units, including some with only a few employees. It would ignore the nature of local unions and collective-bargaining units under the NLRA. See *Lehnert*, 500 U.S. 523 fn. 4. The bookkeeping required of Respondent, with more than 600 units, or similar locals, would be onerous and expensive, diverting funds from representational obligations. The expense and burden of such accounting would discourage unions from seeking to collect any dues from objecting financial core members; it would encourage "free riders," contrary to the statutory intent as perceived by the Court in *Street*. It would also impose a heavy regulatory burden on unions, contrary to the intent and spirit of the president's regulatory moratorium.⁸

Imposition of such an obligation would also be unfair and could impede unions in fulfilling their fair representation obligations. In smaller units, a consolidated local might spend far more on one round of negotiations or a single significant arbitration than it could ever expect to recover out of the dues of the unit employees. If such costs were not apportioned among all those represented by the local, with objecting financial core members bearing their shares, such consolidated locals would be discouraged from undertaking costly representational activities on behalf of employees in smaller units.

Similarly, separation of expenses for bargaining, routine contract administration, arbitrations, litigation and grievance handling by a consolidated local, unit-by-unit, and year-by-year, could preclude that union from recouping its costs from objecting unit employees. In any 1 year, the local might incur expenses in excess of dues income for any individual unit; expenses would be heaviest in the year in which a multiyear agreement is negotiated. Over the course of time, however, those expenses would even out.

Moreover, the local's willingness to pursue a matter to litigation or arbitration inures to the benefit of all of its members. Valuable and applicable precedent may be established, particularly where that local negotiates similar agreements with each of the employers. Other employers may be encouraged to resolve grievances short of arbitration, or to comply with arbitral

⁸ The General Counsel's theory, as indicated by questions directed to the Union's secretary/treasurer, appears to be that it should have undertaken time and motion studies before apportioning salaries and other expenses between chargeable and nonchargeable items. Imposition of such a burden would be contrary to the letter and spirit of the Court's decisions in both *Allen* and *Lehnert*, supra. I also conclude that the Union has met its burden of proof with regard to establishing the apportionment of expenses, through Filla's testimony. Other than to ask whether Filla had looked at documents, and whether the secretary/treasurer had conducted time and motion studies, the General Counsel proffered no evidence to rebut Filla's testimony.

awards, where it knows that this union is willing to undertake the expense of formal proceedings.

In like vein, a union's successful negotiation with one employer inures to the benefit of the employees in all of the units it represents. See *Crawford v. Air Line Pilots*, supra, where the costs of strikes at other airlines and the creation of strike contingency funds were held to be properly charged to agency fee-payers. Employers are vitally concerned with the wage costs of those with whom it competes for employees or customers. Many employers take surveys of area wages. See, for example, *Mobil Exploration & Production U.S.*, 295 NLRB 1179 (1989), and *General Electric Co.*, 188 NLRB 911 (1971). Many others argue in the course of their negotiations that, in order to remain "competitive," they cannot raise labor costs or must even, in some instances, reduce those costs. See, for example, *Accurate Die Casting Co.*, 292 NLRB 284, 296 (1989), and *Robinson Bus Service*, 292 NLRB 70 (1988). The union's successful bargaining with many employers in a single geographical area or industry maintains the level playing field so that employers are able to improve wages and benefits without jeopardizing their competitive position.

To the extent that the General Counsel's complaint seeks to exclude as nonchargeable those otherwise chargeable union expenditures made on behalf of other units, other than arbitration and litigation expenses, I shall recommend dismissal. As to those expenditures incurred by the Union with respect to litigation (as distinguished from more general legal advice) and arbitrations outside of the Chevron unit, I am constrained by the language of *Ellis*, quoted above, to find that they were nonchargeable. To the extent that the Union has required Reed to bear a share of those expenditures, it has violated Section 8(b)(1)(A).

The General Counsel further alleges that the Union violated Section 8(b)(1)(A), by: (1) failing to adequately disclose the basis for the allocation between chargeable and nonchargeable items; (2) failing to reflect that its accounting had been verified by an independent accounting firm; and (3) by failing to properly advise Reed of the chargeable expenses incurred in the Chevron bargaining unit to which he belonged.⁹

In *Teachers AFT Local 1 v. Hudson*, 476 U.S. 292 (1986), the Court addressed the question of what information a union must provide, and what procedures it must adopt, to protect the constitutional rights of objecting fee payers (therein, public employees under a state-sanctioned agency shop agreement). Quoting *Abood*, 431 U.S. at 397, it stated:

The objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective-bargaining activities.

The Court went on to say:

the nonunion employee-the individual whose First Amendment rights are being affected-must have a fair opportunity to identify the impact of governmental action upon his interests

⁹ No contention was made, either in the complaint or the brief, that the Union's apparent lack of any impartial procedure for determining disputed claims of chargeability violated Sec. 8(b)(1)(A). See *Teachers AFT Local 1 v. Hudson*, 475 U.S. 292, 297-298 (1985), with respect to the requirement of such a procedure in the context of a constitutional challenge. See also, *Price v. Auto Workers*, 927 F.2d 88 (2d Cir. 1991).

and to assert a meritorious First Amendment claim. [475 U.S. at 3.]

In *Hudson*, supra, the union had identified its nonchargeable expenditures but failed to identify those which were chargeable; the Court held that it was required to identify both. However, in so finding, it recognized that there were “practical reasons why absolute precision in the calculation charged to nonmembers cannot be expected or required, citing *Allen*.” It held that the union:

need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. [476 U.S. at 7 fn. 18.]

The instant case presents a statutory challenge to the Union’s procedure, not one based on the First Amendment. The standard by which those procedures should be judged is, therefore, less stringent than that imposed in *Hudson*. See *Price v. Auto Workers*, 927 supra 92 (2d Cir.), holding that, in order to satisfy its duty of fair representation, the union need only adopt procedures which are not arbitrary, discriminatory or implemented in bad faith. See also, *Vaca v. Sipes*, 386 U.S. 171 (1967). However, whether the standard is the same or is more relaxed, I am satisfied that the Union has met it in this case.

Thus, I note that the Union, in its notice to nonmembers, explained, in language quoted earlier in this decision, which categories of expenditures would be deemed chargeable and which would not. It did so in terms both general and specific. That same notice indicated that objectors who made an appropriate request would be furnished with the report of an independent accountant. Even without his request, the Union sent that report to Reed. That report, based on the CPA’s examination of the books and his interviews of union staff, taken together with the assurance in the notice that the report would be prepared by an independent accountant, and the explanations contained therein, is sufficiently precise to satisfy Respondent’s obligation under *Hudson* for disclosure of major categories, independently verified.

What is required here, as suggested by both *Abood* and *Hudson*, is a balancing of conflicting interests. That balance must be struck in such a way as not to impede collective bargaining. Viewed in terms of statutory interpretation, the objecting employee’s right not to subsidize expenses not “necessarily or reasonably incurred for the purposes of performing the duties of an exclusive representative” and the union’s right to collect its fair share of those expenses which are “germane to collective bargaining, contract administration and grievance adjustment” from such employees are equal.⁸ See also *Tierney v. City of Toledo*, 917 F.2d 927, 929 (6th Cir. 1990).

⁸ The inclusion of politically or ideologically based expenditures, which present constitutional as well as statutory issues, could change that balance. From a cursory review of recent and pending cases, however, it no longer appears to be seriously questioned that unions may not charge expenditures in support of particular candidates or political parties to objecting fee payers.

The steps the Union has taken in this case, in the main, properly balance its statutory rights and obligations against those of the objecting financial core member. To require the Union to do more would encourage “free riders,” contrary to the legislative intent as identified by the Court in *Street* and subsequent cases.

For the foregoing reasons, and as I have found that Respondent was not required to allocate only those expenses attributable solely to the Chevron unit, I further find that Respondent did not restrain or coerce Reed by failing to respond to Reed’s final letter.

Finally, the General Counsel challenges the Union’s allocation of interest and dividend income to nonchargeable items, resulting in an increase in the proportion of chargeable items to dues income. As noted earlier, the dividend and interest income was derived from assets belonging to the Union (i.e., its members). As Reed chose not to be a member, I see no rationale explanation for why he, or any other dissenting financial core member, should share in the benefits of such assets. I find that the Union’s allocation of this income to nonchargeable items to be entirely appropriate, taken in good faith, and neither arbitrary nor discriminatory. I shall recommend dismissal of this allegation. *Price*, supra.⁹

CONCLUSIONS OF LAW

1. By including the costs of nonunit arbitrations and litigation in those expenditures charged to objecting financial core members, the Union has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

2. The Union has not violated the Act in any other manner alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Inasmuch as Respondent has been found to have breached its duty of fair representation by including the costs of nonunit arbitrations and litigation in the fees paid by objecting financial core members, I shall direct that it recalculate the percentages of chargeable and nonchargeable expenditures and pay to Delbert Reed the difference between the fees he paid under the allocation used by the Union and the allocation as recalculated.

[Recommended Order omitted from publication.]

⁹ In *Tierney v. City of Toledo*, supra, the union had adopted a similar allocation of nondues income. The issue was not pressed before the circuit court, the objectors reserving it for hearing before an arbitrator, and the court expressed no view as to its propriety.